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**THE ARMED NEUTRALITIES  
OF  
1780 AND 1800**



**Carnegie Endowment for International Peace**  
**DIVISION OF INTERNATIONAL LAW**

**THE ARMED NEUTRALITIES OF  
1780 AND 1800**

**A COLLECTION OF OFFICIAL DOCUMENTS  
PRECEDED BY THE VIEWS OF REPRESENTATIVE PUBLICISTS**

**EDITED BY**  
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## Prefatory Note

In President Wilson's address before Congress on February 26, 1917, after recounting the relations between Germany and the United States and the failure of diplomatic means to protect neutral rights, he stated that

"there may be no recourse but to *armed* neutrality, which we shall know how to maintain and for which there is abundant American precedent."

In addition to American precedent, which has already been instanced in the volume issued by the Division entitled *The Controversy over Neutral Rights between the United States and France, 1797-1800*, there is European precedent for armed neutrality; for in 1780 and in 1800 the leading neutral Powers of Europe entered into an agreement to protect their rights against belligerent invasion, by force of arms if necessary. The texts of the agreements constituting the armed neutrality of 1780 and of 1800, together with the orders putting them into effect and diplomatic correspondence bearing thereon, are reproduced in the present volume.

The originals of most of these documents are in foreign languages. English translations, wherever available, have been used, and in other cases English translations have been made especially for the present occasion. As in the previous volume above mentioned, there is no expression of personal opinion and the matter herein contained is issued in the interest and for the convenience of the public without seeking to influence the judgment which it may reach.

It is, however, very important that the origin, nature, and effect of the armed neutrality should be understood, and for this purpose the views of accredited American and foreign publicists dealing with this matter have been collected and are printed in the first part of this volume. It should be said that the authors have been chosen not merely for the value of their contributions but because they are of different nationalities and can be considered as fairly representative of the views of their respective countries, as publicists are wont to expound and to defend the policies of their countries.

The footnotes contained in the works from which extracts have been taken are, as a rule, here reproduced textually except when they point to the sources where documents under discussion are to be found. In such cases the convenience of our readers has been consulted by making the references to the pages of this book.

Finally, it is well to observe that the major part of the contents of this book has already been issued as Pamphlets Nos. 27 and 28, by the Division of International Law of the Carnegie Endowment for International Peace. Those pamphlets were issued to meet a pressing public demand for immediate information upon the general subject of armed neutrality, and as a consequence they do not contain all the matter that additional research has enabled us to bring within this volume. A general revision of the contents of the pamphlets mentioned has also been made, both as regards translations and as regards verification of dates, citations, and statements of facts.

JAMES BROWN SCOTT,

*Director of the Division of International Law.*

WASHINGTON, D. C.

*April 21, 1917.*

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**PART I**  
**EXTRACTS FROM WORKS ON**  
**INTERNATIONAL LAW**



## EXTRACTS FROM AMERICAN AND FOREIGN WORKS ON INTERNATIONAL LAW CONCERNING THE ARMED NEUTRALITIES OF 1780 AND 1800<sup>1</sup>

**ALVAREZ:** *Le Droit International Américain.* Paris, 1910.

Alejandro Alvarez. Contemporary Chilean publicist; born in 1869; doctor of law of the University of Paris; formerly professor of law at the University of Chile and counsellor to the department of foreign affairs of Chile; delegate of Chile, Costa Rica and Ecuador to the Conference of Jurists at Rio de Janeiro for the codification of international law; associate of the Institute of International Law; member of the permanent court at The Hague; representative of his country at the Fourth Pan-American Conference; secretary-general of the American Institute of International Law.

His principal publications are: *Une nouvelle conception des études juridiques et de la codification du droit civil*, 1904; *La nationalité dans le droit international américain*, 1907; *Le droit international américain*, 1910; *La codification du droit international*, 1912; *La grande guerre européenne et la neutralité du Chili*, 1915; *Le droit international de l'avenir*, 1916.

*Page 126.*—While the foresight of the leading statesmen of the United States was directed to give to their country such political organization as best conformed to their new situation, it was none the less also directed to the policy to be followed in the relations with Europe and in the New World. They realized that a substantial foreign policy would be the basis of its prosperity and of its development.

With Europe, this policy is very simple: not to mix in European affairs and not to contract any alliance, that is to say, not to participate in any manner whatever in the system of the balance of power and of intervention.

In his "Farewell Address" Washington clearly sets forth that the United States must live independently of Europe, for its interests are

<sup>1</sup>On the subject of the armed neutrality of 1780 a general reference is made to Paul Fauchille's *La diplomatie française et la ligue des neutres de 1780* (Paris, 1893), a work which should be read in its entirety and from which it is difficult to quote isolated passages. For this reason no extract therefrom is contained in this collection.

very distinct; its situation as a "detached and distant" federation of States bids them follow a different policy.<sup>1</sup>

After Washington, we see Jefferson follow the same line of action. In 1801 he stated to the Governor of New Orleans that the interests of Cuba and of Mexico as well as the interests of the United States were "to exclude all European influence from this hemisphere."<sup>2</sup>

The policy followed by the Union was in accord with that proclaimed by its statesmen.

In the beginning of its independence, the Union entered into treaties with Europe in virtue of which it accepted the principles of the law of nations then in force in Europe.<sup>3</sup>

**BERGBOHM:** *Die Bewaffnete Neutralität, 1780-1783. Eine Entwicklungsphase des Völkerrechts im Seekriege.* Berlin, 1884.

Carl Bergbohm. Contemporary Russo-German publicist, doctor of law, privy councillor, and associate of the Institute of International Law from 1885 to 1898. He was born at Riga in 1849, studied at Dorpat, Berlin and Leipzig; in 1877 became privat docent at Dorpat, from 1884 to 1896 was professor of public law and of international law at the universities at Dorpat and Marbourg, and since that time has been professor of various branches of the law at the University of Bonn. His principal publications are *Staatsverträge und gesetze als quellen des völkerrechts*, 1877, *Die bewaffnete neutralität*, 1884, and a German translation of F. Martens' Russian treatise on the international law of civilized nations, 1883-86.

## I. EFFECT OF THE ARMED NEUTRALITY

*Page 210, § 61.*—In view of the fact that England did not openly submit to the armed neutrality, the practical effects of the latter can

<sup>1</sup>*Richardson's Messages*, vol. 1, p. 222. Cited by Foster: *A Century of American Diplomacy* (1900), p. 439.

<sup>2</sup>*Writings of Jefferson*, vol. 9, p. 213. Cited by Foster, *op. cit.*, p. 440.

<sup>3</sup>In this way, the rule "free ship, free merchandise" then accepted in Europe, was inserted in the treaties of friendship and of commerce concluded in 1783 with France, in 1783 with Sweden and in 1785 with Prussia.

These treaties are interesting from still another point of view. The treaty of 1783 included important provisions dealing with the exercise of the right of search. That of 1785 is the first international agreement by which the right of privateering was renounced; this renunciation was furthermore not renewed in

therefore not be established officially. These effects are nevertheless of a very high order, for the reason that, including England, the allied neutrals succeeded in having all their claims actually respected, and especially the protective power of the neutral flag.

In almost all parts of the world, England was at the same time engaged in vigorous fights upon five different war theaters. The Americans had found support in the French and in the Spaniards; Hyder Ali of Mysore and the Marathi, aroused by French emissaries, had revolted; England had even forced the Netherlands into war; could England under these circumstances take the risk of challenging even the neutral European Powers? The British Government yielded, therefore, as far as the circumstances made this urgently necessary; it chose the form of fresh privateering instructions in order to meet the wishes of the neutrals, without in any way, however, binding itself in accordance with the precepts of international law. First of all, Russia had to be satisfied. An addition to the ordinances of November 20, 1780,<sup>1</sup> issued to its corsairs enjoined the latter to observe strictly the contractual agreements entered into with Russia. In the next place, the English Government availed itself of the outbreak of hostilities with the Netherlands in order to issue a new and thoroughgoing privateering instruction,<sup>2</sup> which promised to exert a beneficent influence upon the practice, because it included the respective provisions of the treaties of England with various neutral maritime Powers, and enjoined upon the commanders of privateers the strictest observance of these provisions, under the penalty of having their concessions rescinded. The further remark that they (the commanders) "must also exactly observe any other regulations as soon as notification thereof should reach them," permits one to infer that the corsairs and the prize courts had been confidentially directed to act as nearly as possible according to the principles of the armed neutrality. In view of the fact, however, that such forbearance was in direct conflict with the

the treaties signed between the United States and Prussia in 1799. By the same treaty the area of military operations, in case of war, was circumscribed. The treaty of 1795 with Spain contains important provisions dealing with blockades.

Like the European Powers, excepting England, the confederation adhered to the treaty of armed neutrality, the importance of which was so great for the free navigation of neutral vessels and for the inviolability of the merchandise they transport. See Fauchille, *La diplomatie française et la ligue des neutres de 1780*, pp. 393 et seq.

<sup>1</sup>*Post*, p. 328.

<sup>2</sup>Instruction of December 21, 1780, *post*, p. 335.

custom and especially with the interests of the privateers, the latter may at first have paid little heed to the new instructions, so that it became immediately necessary to reissue the former orders in peremptory form.<sup>1</sup>

Now that enemy goods had come under the protection of the neutral flag and but few prizes were captured, privateering was no longer a paying institution. The French, the Netherlands and the Americans ceased to capture prizes because the English had gradually seized all their corsairs,<sup>2</sup> and the English encountered on the high seas neutral ships almost exclusively, and these, willing or unwilling she had to respect. Thus, toward the end of the war, privateering had ceased entirely<sup>3</sup> and it may be stated that through the last two centuries the claims of the neutrals have been fully respected by all belligerent Powers. They could now navigate unmolested from any port to any other port, and they may have availed themselves of these favorable circumstances<sup>4</sup> so that the fears of England with regard to the misuse of the neutral flag were not wholly unfounded.

If the war had lasted longer it is quite probable that, because of the advantages which accrued to the neutrals as a result of the conflict between the belligerents, the latter would have become envious of these advantages to the extent of finally doing away with privateering altogether and of restoring their own commerce to action, while under the circumstances, the profit derived from navigation went almost exclusively to the protégés of the armed neutrality. It has been stated<sup>5</sup> that the Swedes whose Government gave especial care and attention to commerce, had profited the most by these circumstances, next the

<sup>1</sup>Instruction of February 15, 1781, *post.* p. 365.

<sup>2</sup>Eichhorn, *Geschichte der drei letzten Jahrhunderte*, vol. 1, p. 486.

<sup>3</sup>Busch, *Ueber das Bestreben der Völker*, pp. 283 *et seq.*; Nau, *Grundsätze*, p. 253; Dohm, *Denkwürdigkeiten*, vol. 2, pp. 152 *et seq.*; Eggers, *Denkwürdigkeiten Bernstorff's*, vol. 1, p. 135.

<sup>4</sup>The so-called "Ostendizing" of the merchantmen became, for instance, a general practice; that is to say, the Hollanders purchased passes in Ostend for their merchantships and subsequently navigated them under the Austrian flag. But England does not seem to have respected the neutral nationality thus acquired. Büsch, *op. cit.*, p. 283. Others, in order to carry on this profitable commerce under the neutral flag, purchased small landed properties in East Friesland or in the Austrian Netherlands, so that they might enjoy the rights of Prussian or Austrian subjects. Dohm, vol. 2, p. 154. At all events, the situation of the neutrals was no longer of such a nature that, as for instance in 1675 in Paris, they could be scoffed at in satirical comedies as peoples who were set on from all sides. Beust, *Observations militaires ou War Notes*, vol. 2 (Gotha, 1745), pp. 242 *et seq.*

<sup>5</sup>Dohm, vol. 2, p. 153; Büsch, *Grundriss einer Geschichte der merkwürdigsten Welthandel neuerer Zeit*, p. 422.

Danes,<sup>1</sup> the Prussians and lastly the Austrian Netherlands.<sup>2</sup> In view of the fact that Russia possessed no active commerce, her commercial advantages, as the actual result of the armed neutrality, consisted in an increased market of her products such as were needed especially by the foreign navies.<sup>3</sup>

## II. IMPORTANCE OF THE ARMED NEUTRALITY

§ 62.—One might indeed have expected that even beyond the duration of the war which had brought their alliance into being, the members of the armed neutrality would have clung to the "principles derived from the primitive right of the peoples" which they had so emphatically promulgated and protected in such an extraordinary manner. But the complexity and the inner conflict of their political interests, to which must be added the inconstancy of the founder and leader of the alliance, deprived the idea of a good deal of its efficaciousness. For this reason, contemporary writers were inclined to attach but small importance to the armed neutrality.<sup>4</sup>

When we verify the importance of the armed neutrality by its immediate practical effect we can perceive in it, indeed, only an ephemeral apparition, a brilliant phenomenon which vanished as quickly as it had come. Still, its effect was not exhausted with the success which, at all events, it had had upon the last years of the American War of Independence. Never before had the principles of free intercourse during the war been so decidedly expressed; never had they been de-

<sup>1</sup>Sweden and Denmark, since they acted against England in their opposition to treaty agreements, had, to be sure, to bear the costs of large convoys (Zachrisson, *Sveriges underhandlingar*, p. 27, and Eggers, vol. 1, p. 134), through which they had to protect their merchantmen against the English cruisers, especially as Sweden's principal export articles consisted of iron, wood and hemp, that is to say, naval munitions which England had always regarded as contraband articles. The Danes secured the trade to East India (Eichhorn, vol. 1, p. 486), and, furthermore, since the States General had entered the war, many Dutch vessels sailed under the Danish flag. Nevertheless, the statement by Castéra (*Vie de Catherine II*, vol. 2, p. 231), according to which a single Copenhagen merchant, by the name of König, is said to have had between 600 and 700 ships on the seas at one and the same time, can not but be an exaggeration.

<sup>2</sup>Dohm, vol. 2, p. 153, reports that the Romberg firm of Brussels had in 1781 no fewer than sixty-eight ships upon the high seas—certain proof of the safety with which the neutral flag could at the time navigate the seas.

<sup>3</sup>Eichhorn, vol. 1, p. 486.

<sup>4</sup>Baron von Albedyhl (*Nouveau mémoire*, p. 40) who as a diplomat lived through the phases of the armed neutrality, states that finally nothing was left of the remarkable phenomenon but the protection of the neutral commerce during the war just then being waged, and—many documents in the archives upon whose margins posterity would perhaps record some not very flattering notes.



fended with such emphasis as through the league of the neutrals. And even although—a fact that can not be denied—the former members of the armed neutrality, not even Catherine II excepted, trampled under foot, as belligerents, during the wars of the revolution and of the first empire, these same principles which, as neutrals, they had held in such high esteem, it must, however, be said that subsequently they returned to them and finally abided by them. Thus, with regard to the humanizing of warfare, the armed neutrality is an event without which the definitive recognition of its principles could hardly have been reached by the Paris Declaration of Maritime Laws of 1856.

In another direction, however, a certain importance must be attributed to the armed neutrality if we will bear in mind the theories resulting from it for the characteristic features of the establishment of a law within the realm of international law, especially of the establishment of that law observed in warfare.

As long as maritime wars continue to be waged, the neutral nations do not want to be harmed in the course of such wars, but wish to continue their commerce and intercourse with one another and with the belligerents. One belligerent, however, finds it to his interest to isolate the other and to deprive him of the importation of such goods as might increase or renew his power of resistance. In order that the belligerent may consent to renounce the enforcement of this interest as long as he is a party to the war, enjoyment of the advantages of an undisturbed commercial freedom may be held in prospect for him if on his part he remains neutral in some other war. The voluntary acceptance by a State of such an adjustment between the injury of to-day and the advantage of to-morrow presupposes, however, that the alternation between the parts of belligerent and neutral is likely enough for him. Not every State may rely upon such a presupposition; England, for instance, can hardly, in a maritime war of some magnitude, remain a neutral spectator for any great length of time; and it is for this very reason that, from time immemorial, England has been unwilling to hear anything about the freedom of neutral navigation. Now, if the neutral Powers thought that they had to insist upon the freedom of their commerce on the basis of the principles of the armed neutrality while a corresponding treatment could not be obtained from all the belligerents by a consideration of their interests in the manner indicated, there was no other recourse left open to them except to enforce another means against the recalcitrants: threat.

The armed neutrality has shown that even the strongest maritime Power—the more certainly so if a maritime war continues for a long time—may be compelled to adapt its conduct to the demands of the neutrals who have reached a certain agreement among themselves. The life of the armed neutrality has shown, furthermore, that power must be taken into account whenever it is sought to find, among independent nations, recognition for a new law, especially the law of warfare. In the establishment of the laws of maritime warfare, the armed neutrality has, in surprising manner, illumined the relation of the neutrals to the belligerents; and this is a feature of the armed neutrality whose importance can not be minimized.

§ 63.—As compared with the prize regulations and privateering instructions of belligerent States the principles which the neutrals regard as law and any publications issued by them in regard thereto and to be observed by their subjects are of but little importance. In view of the fact that the war-ships and armed corsairs of the belligerents rule the seas and their courts judge of all prize matters, according to their treaties, laws and ordinances—whether or not this is legitimate, is another question—the belligerents assume, even as in war, an active rôle with regard to the neutrals who remain essentially passive. That which the neutrals postulate as a right is in practice certainly of less importance than that which the belligerents order as a right: the prize decisions of the belligerent States are expressions of their *will*; they are principles in accordance with which their machinery of might, that is to say, in accordance with which their armed sea police and their prize courts will probably *act* and in comparison with which the dissentient legal views of the neutrals appear simply as *wishes* to be treated according to certain principles. Even in case the neutral should secure regard for his wish, for his conception of law on the part of the belligerent, and even although under circumstances he were to dictate to the latter the substance of his prize regulations in so far as neutral interests are concerned, still, the real source of the practical positive prize law is the belligerent State. This can be readily understood and is incontrovertible when we consider and admit that he who has conceived the thought of a legal principle is not the source itself of this principle, but only he who turns such thought into a binding commandment. Not the conceived, recommended or requested law but the practical law is the only law which is of value; practical law is a positive law, that is to say, it is set

forth as the standard of conduct for all whom it concerns, hence, for the deciding and executory authorities whose views, in virtue of the organization of human communities, are turned into acts of the will, and whose judgments are transformed into absolute commandments; to my mind, that alone is law which operates as law.

Whether or not the prize laws of the belligerents may be looked upon, from the material point of view, as unjust, barbarous, or qualified in any other way, the fact remains that they operate as formal law with regard to which the eventually dissentient postulates of the neutrals are, as a rule, nothing but idle wishes; and if the publications of the neutrals deal with any such idle desires, they are injudicious, confusing and injurious. What good, I will ask, was accomplished by such neutral announcements as, for instance, were issued during the American War of Independence? If the Government of a neutral State wishes, on principle, to establish its views with regard to maritime questions, there is nothing objectionable in its issuing a publication to its subjects, in the form of a regulation or in any other form. The point which in such circumstances the Government must bear in mind is that it have a clear idea as to the limitations of its authority, and that in such instructions it must not include any statements which predicate theoretical opposition against the one real practice in maritime law, that is to say, against the practice of the belligerents.

The edicts of the neutral Governments to which we have referred and others similar thereto are, to a large extent, guilty of an irrational mixing of two heterogeneous elements. The one of these two elements is represented by those ideas and principles which are recognized by both the belligerent and the respective neutral nations concerned, no matter how such an agreement may have been reached; the second of these two elements is represented by those ideas which one party defines in one way, and another party in another way, and by principles which the neutral party asserts, while the belligerent State objects to them, or the other way round. We are not going to consider the first-named elements which are not in controversy. Their promulgation at the time of the outbreak of a war and recalling them to the attention of those concerned can but be approved, and should even be made obligatory. But as to the constitutive parts of the second class in regard to which the belligerent and the neutral will probably not agree, does not the neutral State forget that in case it can not or will not employ force, it is merely a subordinate factor in

the building up of law and can not in practice enforce its legal concepts toward the dissentient belligerent? Unfortunate must be the experiences of the trustful merchant who, in the course of the war, would follow such an apparently paternal direction and warning of his Government!

No one expects neutral States blindly to submit even to Draconic laws of the belligerent Powers. But what good will be accomplished—this is, after all, the gist of the whole matter—if by means of explicit announcements, a neutral Government permits its merchants, as seafarers, to do that which the belligerent party forbids under heavy penalty? or if it studiously withholds from them what sort of treatment they may expect from this or from that belligerent? Subjective regulations of this sort, quite frequently the result of mere caprice, to which is given the pleasing name of “general international law,” and fated to disappear with the momentary interest which brought them into being, are more than mere thoughtlessness, they are with regard to the penalties which the ill-treated subjects must of necessity suffer as a result thereof, an agreement against the well-being of the people.

§ 64.—We can easily imagine some of the consequences of such a misconceived thrusting forth of one’s own viewpoint with regard to that which is law, and the injury which such wrong information and incomplete warning must cause to commerce. Let us consider, for instance, the proteic conception of contraband. The edicts already referred to and issued by the States bordering upon the Mediterranean circumscribe it almost without exception, firmly believing, no doubt, that their views fitted the “general international law” with regard to the articles directly of use in waging war. If seafarers had believed, however, that under the Venitian, etc., flag they were permitted to transport all other goods, for instance, to France, any English corsair or judge of a prize court would have taught them quite the contrary, for England’s contraband list included many other articles which could be used indirectly for war purposes. The city council of Hamburg was wise enough to recommend to ship-owners an examination of the list of those articles which the belligerent Powers had declared to be contraband. On the other hand, there is no indication in this regulation which hopes for the enforcement of the principle “free ship, free goods,” that France would consent to this principle, so that English goods could be, but French and American goods could not

be transported without danger. It is quite possible that the merchants of Hamburg knew what treatment would be given enemy goods under neutral flag by either the one or the other of the belligerents, and that therefore they required no special instructions upon this matter. Whoever was informed of this must have been acquainted with the major portion of the remainder of the extended regulation and if their instruction refrained from explaining one of the most important questions, the city council might just as well have omitted any reference whatever to the entire regulation.

Sweden's ordinance, however, is the most surprising of all such edicts with regard to indefiniteness; it might indeed be regarded as a diplomatic note addressed to the English Cabinet, but not as an edict for the instruction of the Swedish mercantile world. It forbids, for instance, to the Swedes, all commerce in contraband, but any other commerce, according to the treaties and "general international law" is expressly permitted. And what would have been the consequences if, trusting that the Swedish flag covered enemy goods, they had transported French goods which the English might have captured? It can not be said that the Swedish Government was resolved in such case to protect the interests of its subjects. It was not resolved to pursue such a course; on the contrary; it had already decided to confine its action to preventive measures of uncertain effect, and to diplomatic representations. The State would not have been responsible for the actual losses caused to the credulous as a result of that criminally misleading ordinance.

At all events, it is wiser to leave it to the tact, to the prudence, possibly to the luck of the interested parties themselves as to what they may venture to do upon their own responsibility; and it is better to keep silent even as to the other neutrals rather than to issue such confusing proclamations. The neutral State is certainly entitled to be heard in the establishment of law concerning the relations between neutrals and belligerents. But when in confidence it notifies its subjects, as already finally accepted, of a prize law yet to be secured and which seems to it better and more just than that applied by the belligerent, it shows itself in such case to be an impractical State, believing that it need merely announce its principles and the facts will voluntarily and unanimously conform thereto.

The original opposition of the neutral against the maxims of the belligerent may indeed lose its theoretical aspect and enter into the

practical stage, and thus effect an essential transformation in the unilaterally conceived "*Kriegsraison*"; and as an equal, and under certain circumstances even as a superior factor in the shaping of law, the unsatisfied neutral, even in the midst of a war, may take a strong stand toward the belligerent, but only on the condition that it will not be afraid to pass from mere representations to reprisals, and from reprisals to measures of war. If the neutral wishes to be heard it must at least oppose with force, held in readiness, the belligerent which defiantly trusts to the force it has put into operation. It is then possible for a neutral State, and if not possible to a single neutral State then to several allied neutral States, successfully to oppose their interests to those of the belligerent and turn them into an efficient means in the formation of the law.

Once and for all, the armed neutrals have demonstrated this possibility to the incredulous belligerents. Here, therefore, in the field of constituting law in international law, lies the significance of the armed neutrality reaching beyond its direct, practical effects; it was not merely the expression for the part which the neutrals claimed for themselves in the development of the laws of maritime warfare, but it was also the only form by which the second-rate maritime Powers, with a firmly resolved forward movement, could succeed in giving a new direction to international maritime law; for the national life and world history have no consideration for a law that the people are not willing to fight for. . . .

## I. THE RIGHT OF THE NEUTRALS, 1783-1800

§ 69.—England was far from recognizing the principles of the armed neutrality in the sense of "general international law," especially the principle "free ship, free goods." Her intention to regard then, as theretofore, the principles of the *Consolato del Mare* as authoritative, and to admit the "new maritime law" only on the basis of treaties, became quite evident at the Versailles peace agreement through her unequal treatment of her adversaries. Through a renewing of the Utrecht treaties the protective power of the neutral flag was granted to France and to Spain,<sup>1</sup> and to the former State in the treaty of commerce and navigation of September 26, 1786, as well; the "ancient

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, pp. 519, 541, 553; Hennings, vol. 2, pp. 474, 493, 510; Martens et Cussy, vol. 1, pp. 301, 311, 398.

maritime law" remained in force with regard to the Netherlands,<sup>1</sup> because the Government of this country had trifled<sup>2</sup> with that "privilege."

The other Powers which had taken part in the last war, together with all the members of the neutrality alliance, concluded during the subsequent short period of peace, a large number of treaties affirming either all the principles of the armed neutrality or at least the second of these principles, according to which the neutral flag was to cover enemy goods.<sup>3</sup> A number of conventions were entered into which absolutely ignored the principle of "unfree ship, unfree goods,"<sup>4</sup> and in the celebrated treaty of September 10, 1785, Frederick the Great and Benjamin Franklin went even so far as mutually to renounce the exercise of privateering in the improbable case that war should break out between their respective States.

During the decade following the termination of the North American War of Independence, not a single treaty was concluded on the basis of the *Consolato del Marc*. But this faithfulness toward the principles which had been proclaimed was of little significance, because it did not have to stand the test against attack. When a State was neutral in a war, principle and interests harmonized; if general peace prevailed, the law of maritime warfare was inoperative. But when war came, and in its train the opportunity for the former neutral States, as

<sup>1</sup>Martens, *Recueil*, p. 560.

<sup>2</sup>Martens, *ibid.*, p. 173; Hennings, vol. 1, p. 56, vol. 2, p. 62; Martens, *Erzählungen*, vol. 2, pp. 101, 103; Ch. de Martens, *Nouvelles causes*, vol. 1, p. 169; Martens et Cussy, vol. 1, p. 202.

<sup>3</sup>These treaties were concluded between Russia and Denmark, October 8/19, 1782; with Austria, in November, 1785 (in the form of two edicts); with France, December 31, 1786/January 11, 1787; with Naples, January 6/17, 1787; with Portugal, December 9/20, 1787; treaties of France with Holland, November 10, 1785; with Hamburg, March 17, 1789; treaties of the United States with Holland, October 8, 1782; with Sweden, April 3, 1783; with Prussia, September 10, 1785; treaty of Denmark with Genoa, July 30, 1789.

<sup>4</sup>These conventions were, of course, entered into only with the Barbary States and with Turkey, such, for instance, as the treaty of the United States with Morocco, January 25, 1787; of Spain with Tunis, June 19, 1791; of Russia with Turkey, June 21, 1783, confirmed by the peace of Jassy, January 9, 1792. The Russian-Turkish treaty does not contain the usual clause of reciprocity by which the Porte declares not to confiscate Russian goods under enemy flag, although Russia does not renounce her right to confiscate Turkish goods under enemy flag; the treaties of the United States and of Spain with the Barbary States provide, to be sure, for reciprocity, but in practice they turn out to the advantage of the American, and as the case may be, to the Spanish nation, because the pirates were hardly ever in position to entrust important objects to a foreign flag.

belligerents, to observe and regard as sacred the "principles derived from the original code of laws of the peoples" which were to form the "permanent law in all cases concerning the enforcement of the rights of the neutrals"—then the associates of the league with its founder at their head, left their banner shamefully in the lurch and joined the camp of the "sea-tyrant whose despotism upon the seas was to have been broken." Mindful of the ideal conception of its great minister, "that there could be no future deviation from those principles," only one State of those which had signed the neutrality declaration refused to the uttermost to break faith with itself—it was compelled to do so by force: after the battle in the roadway of Copenhagen, Denmark, the last champion of the principles of the armed neutrality, abandoned the "freedom of the neutral flag" which had been betrayed by all. What a triumph for England!

§ 70.—"The right of the offended is infinite." This dogma of the philosophers of the law of nature who wrote toward the end of the past century seems, as it were, ready-made in order to provide the legal basis for the actions of the maritime Powers during the coalition wars against the republican and imperial France. The belligerents entered upon the declivitous road of "reprisals" to which they resorted more and more and finally returned to the barbarism of the middle ages. In the course of this period even international law disappeared, along with the political system of Europe.

With the intention of destroying the abuses of the laws of maritime warfare at their roots, the French convention of 1792 adopted a series of resolutions which resulted in nothing less than, in imitation of the Prusso-American treaty of 1785, stripping the right to seize private property on the seas, by a general renunciation by the maritime Powers of privateering. This proposed reform was not, however, welcomed by the other States. On the contrary; on February 8, 1793, Russia declared the treaty of 1787 which had sanctioned the principle "free ship, free goods," abrogated until order had been reestablished in France, and on March 25th of the same year, Russia entered into an agreement with England for the purpose of stopping absolutely all traffic between revolutionary France and the rest of the world.

There began now a formal rivalry between the war adversaries, and in the short space of five years all barriers were thrown down which had stood in the way of the unrestricted plundering of enemy and neutral subjects. The National Convention answered the Russo-



English Convention by issuing a decree on May 9, 1793, which suspended the protective power of the neutral flag in regard to enemy property, until her enemies should again have recognized the basic freedom of neutral commerce, declaring at the same time all necessities of life as contraband. But in the course of the year 1793 England concluded in turn conventions with Spain (May 25), with Naples (July 12), with Prussia (July 14), with Austria (August 30) and with Portugal (September 26) on the same basis as she had concluded her previous convention with Russia, that is to say, for the purpose of a systematic starvation of her opponent. England, however, did not succeed in her effort to induce Denmark to join in this attempt and to surrender her declared principles. On July 28, 1793, Count Bernstorff made answer to the English Cabinet with so much dignity that in the English Parliament he met with approval for his faithfulness to conviction, and on March 27, 1794, he concluded with Sweden, which had shown herself by far more pliant toward Russia and England, a treaty declaring the blockade of the Baltic Sea through strong war fleets, against all war operations, and for the mutual protection of the commerce of the subjects of both countries.<sup>1</sup>

The Danish merchant marine was to be made to feel the full effect of this blunt decision and the full ire of England for refusing to accept her proposals. In the jurisprudence of the English prize courts a distinction had been drawn between two kinds of contraband: arms and all material for the construction of ships had been regarded as

<sup>1</sup>That in those times many States acted unscrupulously, although upon occasion they were ready to interfere forcibly in behalf of their pretended principles, is perhaps best shown by the fickle attitude of the United States. In 1778, the United States had recognized the principle "free ship, free goods," and in 1780 it had even accepted all the five points of the armed neutrality. On November 19, 1794, it concluded, however, a treaty with England through which it fully accepted the system of the *Consolato del Mare*, and the Secretary of State Jefferson, nevertheless, expounded to an Englishman the difference between "natural" or "general international law" and "contractual privilege." But in spite of this, in its treaty with Spain of October 27, 1795, the United States again recognizes the freedom of the neutral flag. When the French Directory had caused unheard-of violence to neutral navigation by some edicts issued in 1797 and 1798, the Government of the United States regarded this course almost as a declaration of war, and it proceeded to make thoroughgoing preparations for the conflict, a fact which did not prevent it, however, from again repudiating in the new treaty with Prussia, July 11, 1799—the same State with which America had previously pretended to anticipate all other countries in the humanization of laws of maritime warfare—the inviolability of the neutral flag, and soon thereafter, on September 30, 1800, returning once more to the principle "free ship, free goods," through the treaty of peace and commerce concluded with the First Consul.

contraband; imperishable necessities of life, horses, etc., were added to this list if they were destined for ports in which the enemy was fitting out war-ships and troops. If the forbidden goods belonged to the owner of the ship, the latter was confiscated as well, otherwise the cargo alone was confiscated and payment was to be made for it in case it was proved that it was produced in the home country of the ship itself. Finally, and in accordance with a new principle, England wanted to forbid neutrals generally to transport any products other than those of their own land, and things looked pretty bad in practice as to the actual payment in case the "right of preemption" was exercised.<sup>1</sup>

In addition to all this, England, since the outbreak of the war, had returned to her old practice of the purely "declared" blockade, and all ships which were on their way to a French port, fictitiously declared in a state of blockade, were unrelentingly seized. Not satisfied therewith, England forbade the neutrals, by announcement of January 8, 1794, any and all traffic with the French colonies, although she could hardly have based such action at this time upon the unlawfulness of the "*commerce nouveau*"<sup>2</sup> because since 1749 France had already surrendered her monopoly of commerce with her colonies and permitted all the other nations to engage in that commerce. But when, in time, France realized that almost every connection between her own ports had been made impossible, she resorted to the most rigorous measures, and on October 31, 1796, the Directory forbade all importation of any and all English goods, and on January 18, 1798, there was issued an ordinance which because of its monstrosity was maintained only up to December 20, 1799, according to which the nationality of the ship was determined on the basis of the nationality of the cargo, that is to say, every vessel on which were found any English products whatever, was confiscated along with her cargo. Through this act an

<sup>1</sup>In the course of but a few months of the year 1793 one hundred and eighty-nine ships laden with corn, meats, etc., were taken from Denmark alone; their value in English ports was estimated at 557,000 pounds sterling, of which, up to November, 1794, 38,407 pounds sterling had been paid to the owners! Nor did Denmark fare better at the hands of France. A judge of a French prize court declared, for instance, that the commercial treaty with Denmark of 1742, concluded for the space of fifteen years, had terminated in 1757. He did not know—or did he not want to know?—that already in 1749, this treaty had been continued until a new treaty should be entered into, and he rendered a decision of a kind which, all of a sudden, occasioned Danish merchants a loss of twelve million francs. See Koch et Schoell, *Histoire*, vol. 6, pp. 30, 45.

<sup>2</sup>Bergbohm, pp. 33 *et seq.*

attempt was made to put the equally monstrous principle "unfree goods, unfree ship" into effect. But as numberless things had to be established in this matter, and things which it was impossible to determine on the high seas, all ships had to be taken to port for the most detailed inspection; and to put a climax to all imaginable vexations, the delays within which the proof of innocence had to be submitted and the time allowed to institute legal action were reduced to an unheard-of short space of time. One could not but think that the means for the final destruction of maritime commerce had then been exhausted. But the neutral nations were still enjoying a last privilege for their navigation: the exemption of their merchantmen from search in case they were navigating under the convoy of a war-ship of their State, providing the commander of such ship gave assurances that the vessel entrusted to his protection carried no contraband. England, however, now undertook to annul this privilege, and along with it to put an end to all traffic between the neutrals and the enemies.

## II. THE SO-CALLED SECOND ARMED NEUTRALITY, 1800-1801

§ 71.—For the purpose of determining absolutely the nationality and cargo of ships sailing under the neutral flag, the belligerents exercised a right of search, and since the last maritime war there was no end to the controversy as to the conditions and limits of this right. England in particular increased this measure of sea police until it attained the proportions of a formal inquisition, and finally established the principle that a war-ship which resisted the search of vessels under its convoy, might be confiscated as well. After a Danish captain of frigate had refused an English ship permission to search vessels under his protection, the English Ambassador, on April 10, 1800, not only demanded from the Danish Government apologies for the act of the officer, but also an indemnification for the offense against the British flag.<sup>1</sup> Count Bernstorff, on April 19, in clear and dignified manner, refused to comply with the demand. It so happened that in the month of July following, the Danish frigate *Freya*, which also had opposed search of the merchantmen under her convoy, was, after brave resistance, seized along with the merchant vessels and brought into an English port. It now was the turn of Denmark to demand satisfaction. England, however, again pretended to be the offended party and

<sup>1</sup>Christian Gunther, Count von Bernstorff, since the death of Count Andreas Peter von Bernstorff (1797), Minister of Foreign Affairs.

sent to Copenhagen her own emissary, accompanied by a fleet squadron under an admiral in order to reach a settlement with regard to the disputes that had arisen. Count Bernstorff proposed the Emperor of Russia as arbitrator or mediator; England preferred, however, to reach an understanding with the Danish Government without the intervention of a third party, and on August 29 she concluded with the Danish Government a preliminary convention by which the case of the *Freya* was settled, but the legal question in reference thereto left open.

§ 72.—Deeply vexed by the egotism of Austria and of England, Emperor Paul had withdrawn from the alliance with the Powers against France and, won over by the courtesy of Bonaparte, the First Consul, he suddenly changed his entire policy, and decidedly in favor of France. When England now proclaimed principles whose practical enforcement threatened to lead to the final destruction of the strangled commerce of the neutrals, the Emperor conceived the plan to meet the unbearable tyranny in the same manner which had proved itself so effective in the North American War of Independence. Upon receiving the first news of the demands which England exacted from Denmark, he had a considerable fleet outfitted and on August 27, through a declaration, he invited the Cabinets of Denmark, Sweden and Prussia to a renewal of the armed neutrality. Two days later he ordered the seizure of all English goods within his States and on November 7 he laid an embargo upon all English ships within Russian ports, although the treaty of March 25, 1793, did not permit him to do so even in case of war.

The invitation to renew the armed neutrality was accepted and on December 16 and 18, respectively, 1800, the Scandinavian States and Prussia signed at Saint Petersburg conventions with Russia by which, in analogy with the neutrality treaties of 1780 and 1781, they united for the common protection of neutral maritime commerce, this time, however, with the expressed intention of together denying the encroachments of England. Only two new provisions were added. The first of these enjoined upon the commander of a blockading fleet the duty of informing the neutral ship which intended to enter the port, of the state of blockade of the harbor; the other declared that a declaration on the part of the commander of the convoy to the effect that the vessels sailing under the protection of the war flag carried no contraband, should exclude any special examination on the part of the ships

of the belligerent. In addition to all this, provision was made for special marks by which the nationality of the ships was to be indicated.

England which was in better condition now than in the year 1780, regarded the convention as an hostile act and demanded explanations from Denmark. Count Bernstorff made a short and plain answer emphasizing the fact that the Danish Government had never abandoned the principles of the armed neutrality of 1780. In the English Parliament a strong opposition manifested itself against the systematic stirring up of the northern Powers, and Prussia, the ally of England decidedly disapproved of the measures which the British Cabinet intended to employ.

In spite of all this, an embargo was laid, January 14, 1801, upon all Russian, Danish and Swedish ships which were then in English waters and a fleet dispatched to the North Sea. When the latter appeared in the Kattegat, the Danish Government, on March 29, laid in turn an embargo upon all English ships; but already on the following day the English under Nelson forced their way through the Sound, and on April 2 defeated the Danish fleet in the Copenhagen roadway. Thus Danish resistance had been broken, and in the course of the armistice concluded on April 9, the principles of the neutrality convention of December, 1800, were suspended.

§ 73.—In the meantime a new emperor had ascended the Russian throne and the Government of Alexander I showed itself quite ready to accept all of England's pretensions with regard to the "prerogatives of a belligerent Power." On May 18 it released all the English ships which had been placed under embargo, and on June 17, 1801, concluded with England a convention which, with regard to the matter of the armed neutrality, is to be regarded as a complete victory for England. Commercial traffic with the colonies was granted to the neutrals, although under certain limitations contained in an explanatory article of October 20; in all other respects, however, England secured the recognition of her old and new maxims. In the place of the principle "free ship, free goods" there figured expressly this other principle that the flag did not cover the cargo, and that the belligerent, even as on the basis of the *Consolato del Mare*, might seize goods of his enemy wherever they were found; the definition of blockade as the armed neutrality would have it understood, was weakened by changing the word "and" into "or": to make the blockade effective no longer required that the port should be closed by "vessels stationed sufficiently

near *and* in such a way" that entrance into such port should be confronted with evident danger, but it would be enough if ships were "stationary *or* sufficiently near"; and finally in so far as the right of search was concerned, it was decided that all search should be refrained from "if the papers are found in form, and if there exists no good motive for suspicion." No reference was made to the authority of the commander of the convoy to resist any interference with those entrusted to his protection, provided he had guaranteed the innocence of the articles transported. The right of search was furthermore restricted to national war-ships and, hence, denied to corsairs meeting with ships sailing under convoy. But in practice this was of little importance since the corsairs, through all times, dared to approach such transports only in exceptional cases.

The Russian Government promised furthermore to invite the two Scandinavian Powers to accede to this convention—Prussia was regarded as no longer of any account in this matter. Count Bernstorff went in person to London in order to obtain, if possible, some concession for his country; but his efforts proved in vain. The Swedish Government likewise was opposed to recognizing the principles of June 17; and left in the lurch by Russia they had to cease their opposition; as a result, Denmark signed a treaty with England on October 23, 1801, and Sweden on March 30, 1802, by which they joined the Russo-English convention. This was the end of the second armed neutrality.

### III. THE RIGHT OF THE NEUTRALS, 1801–1856

§ 74.—After the last attempt to secure the interests of the neutrals with regard to the inconsiderate fury of the parties to the war had utterly failed, nothing, during the short period of peace and the conflicts which followed soon thereupon, is further heard as to whether the neutrals were still entitled to any opinion, hence even less to a will to assert an opinion or to lay claim to any right.

The victory of the English at Trafalgar on October 21, 1805, over the French fleet convinced Napoleon that all efforts against the English on the seas would be fruitless. He had but one means left to accomplish the defeat of the English; he could reduce his opponent by a continental blockade. He began by demanding, in the treaty of February 15, 1806, that Prussia close Hanover, the Weser and the Elbe to the English. To this England answered on May 18 by declaring a

blockade of all the ports from Brest even to the Elbe. Napoleon replied to this measure with the so-called continental system established by the decree of Berlin, November 21, 1806,<sup>1</sup> and of Milan, December 17, 1807; England again increased the blockades in corresponding manner through several orders in council in the course of the years 1807 and 1808.<sup>2</sup>

With this, in so far as there still were neutrals, any difference there had been as to permitted and unpermitted commerce of the neutrals was wiped out. The momentary efforts of Russia, of Denmark and of Sweden, to secure recognition for the rights of neutrals, were without any practical results: "The frenzied acts of the continental system, and the race between England and France as to which

<sup>1</sup>The Berlin decree contains the following principal provisions: the whole of Great Britain is declared in a state of blockade; any and all traffic, any and all correspondence with Great Britain is forbidden; letters and other postal parcels addressed to England or to an Englishman, or if written in English are to be confiscated; all English subjects falling into the hands of troops of France or of her ally are to be treated as war prisoners; all English property shall be confiscated; any and all traffic in English goods is forbidden; to no port may be admitted any ship coming from England or from her colonies or having put in at an English harbor in the course of its trip. The Milan decree contained these additional provisions: any ship, no matter of what nationality, which has submitted to search by an English ship or been allowed to be taken to an English port or delivered any articles whatever to the English Government, is to be regarded as denationalized and may be confiscated as if it were an English vessel; any ship, no matter to what nationality it may belong and no matter what cargo it may carry, coming from an English port or from an English colony or from a colony occupied by England, and similarly any ship destined for England or her colonies or places occupied by English troops—shall without further ceremonies be adjudicated to the captor as a legitimate prize. This continental system applied not merely to France and her allies, but as well to any States whatever under the influence of France: for the reason that Napoleon's brother, King Louis of Holland had dared, among other insubordinations, to show consideration in the enforcement of the decrees, he was deposed by the Emperor; because Portugal was not able to carry out the system against England with all necessary strength, war was made upon her; and the commercial ordinances, opposed to the continental system, and to which Russia along with Denmark, Austria and Sweden had acceded became likewise a cause for breaking with Napoleon.

<sup>2</sup>The Order in Council of November 11, 1807, was especially remarkable; it was repeatedly modified and soon completely abandoned with regard to whole countries and stretches of coast. It ordered, for instance: to these restrictions, as though they were most closely blockaded by English war-ships, are subject all ports of France, of her allies, of all countries which, though not at war, have yet excluded English ships, and in general any and all other ports and colonies of England's enemies; any ship sailing to these colonies or lands or coming therefrom, is to be treated, together with its entire cargo, as a legitimate prize; all goods which are the products of these lands, etc., shall be regarded as contraband, etc.

of the two could show the least regard for any international law"<sup>1</sup> came to an end only with the defeat of Napoleon.

§ 75.—If ever the need was felt for an international code of maritime laws, it was in those days when the fearful struggle between the two West European maritime Powers destroyed the last traces "of a right of the neutrals," which had at one time been so emphatically championed by the armed neutrality.

For the time being, however, no agreement could be reached with regard to principles on the basis of which the commerce of the neutrals with the enemy was to be carried out: neither the principles of England, nor those of the armed neutrality were accepted by the congresses which, after the fall of Napoleon, were to reorganize the European relations. On the contrary; already in the first meeting, February 5, 1814, of the congress held at Châtillon, Lord Castlereagh, the representative of England, had secured action to the effect that maritime questions should not be discussed. Neither during the peace parleys at Paris nor at the Congress of Vienna were the rights of the neutrals even referred to.<sup>2</sup>

The States were therefore compelled to act in these matters according to existing treaties. The numerous treaties of this period, from the Vienna Congress down to the Paris peace of 1856, closely follow the principles of the armed neutrality; not one of these treaties returns again to the principles of the *Consolato del Marc*. On principle, England refrained during all this time from entering into any contractual agreement regarding the rights of neutrality. No State would willingly have returned to the old maxims, and the British Government was loath to accept the "privileges" of the "new maritime laws."

The first great European war, after the long period of peace, and especially the alliance of England with France matured the fruit which the Versailles peace of 1763 had denied to the neutrals. When the interested States had renounced privateering for the duration of the Crimean War, and England had become convinced that she had to surrender at last the rigorous "old maritime law," the Powers present at the Paris Peace Congress, by means of the declaration of maritime laws of April 16, 1856, to which almost all the States of the European

<sup>1</sup>Wurm, in *Deutsche Vierteljahrs-Schrift*, 1855, pt. 3, p. 353.

<sup>2</sup>Treitschke, *Deutsche Geschichte im neunzehnten Jahrhundert*, vol. 1 (1879), pp 542 et seq.



family of nations had acceded,<sup>1</sup> guaranteed in the memorable four points even the rights of the neutral maritime commerce in accordance with the postulates of the armed neutrality. The four points referred to read as follows:

1. Privateering is and shall remain abolished;
2. The neutral flag covers enemy goods, with the exception of contraband;
3. Neutral goods, with the exception of contraband, are free under the flag of the enemy;<sup>2</sup>
4. To be binding, blockades must be effective, that is to say, they must be maintained by war forces of such sufficiency as will actually prevent access to the enemy coast territory.

**BLUNTSCHLI:** *Das Moderne Völkerrecht der Civilisirten Staaten.*

Third edition revised and enlarged. Nördlingen, 1878.

Johann Caspar Bluntschli. Swiss-German publicist and professor; born in 1808; died in 1881; member of the Institute of International Law; a prolific author of world-wide reputation of treatises on various branches of public law. In the domain of international law he is best known for his work entitled *Das moderne völkerrecht der civilisirten staaten*, the first edition of which appeared in German in 1868. In 1870 it was translated into French by Lardy, under the title of *Le droit international codifié*, a third edition of which appeared in 1881, with the cooperation of the learned author.

Bluntschli's work states international law in the form of a code, following the example of the German-American publicist, Francis Lieber, who had codified the laws of warfare on land in the famous Instructions issued by the United States in 1863, and consists of 862 articles. The various articles are followed by historical and critical notes when deemed necessary to explain or to justify the

<sup>1</sup>Spain and Mexico rejected point 1; the United States of America was almost on the point of accepting it, on the condition, however, that the freedom of private property, even of enemy property, should be in principle accepted to extend to the seas, even as it had been recognized in warfare on land. Neither of the three named countries found any objection to the other three points. Meanwhile, and after England had refused to accept the conditions of the United States, she declared that the four points were inseparable and that recognition of all four together must be obtained. Therefore, the opposition of the three States named toward the three last points in question, must be regarded as undecided, as long as England persists in her attitude.

<sup>2</sup>This principle, which contains a further preference, had not been asserted by the armed neutrality. See Bergbohm, p. 145, note 5.

text. The treatise is not a codification of international law as it actually existed at the time of publication, but rather a concise statement of what the learned author believed the law was or should be. The book has been translated into various foreign languages and possesses very great authority.

§ 447.—A just war is the necessary condition of any military alliance. Treaties whose object it might be to attack a foreign State, in common and for no legitimate cause, constitute a violation of international law and are not binding. Allies are never obliged to take part in a war whose injustice is evident.

It is the object of defensive alliances to defend, either the existing right, or at least the existing state of conditions. It is not necessary that at the moment of the conclusion of the treaty, one of the allies should be threatened with war. States which would defend their neutrality with armed forces may indeed form an alliance between themselves for the purpose, in time of war, of causing the rights of the neutrals to be respected. For instance: the armed neutrality of 1780 between the northern maritime Powers.

§ 794.—The neutral flag covers not merely the neutral vessel, but even the cargo belonging to citizens of one of the belligerent States, with the exception of war contraband.—Free vessel, free cargo.

1. The principle that the neutral flag, that is to say, the neutrality and the nationality of the vessel, covers the merchandise, even when the latter belongs to merchants of the enemy nation, was established for the first time in a treaty concluded in 1650 between Holland and Spain; it was not more generally recognized until the establishment of the principles of the armed neutrality, proposed by Russia during the war between France and England in 1780. The maritime Powers, and especially England, had been wont to seize enemy merchandise on board neutral vessels; France at times went so far as to seize the neutral vessel, in case it carried enemy merchandise; not one of these principles was, however, universally accepted. England still clung to the ancient usages, and the courts of the United States, while expressing the desire that more just principles might be established, regarded this right as unattackable. The international treaties concluded at this time differed one from the other; thus for instance, England and the United States in their treaty of 1794 admit the principle that the neutral vessel is free, but that the enemy merchandise may be confiscated; still, in its treaty of 1778 with France, and in its treaty of 1785 with Prussia, the United States had established the principle that the flag covers the merchandise. In 1799, numerous negotiations were entered into between Prussia and the United States, and thanks to the obstinacy of Prussia, in the new treaty of 1799 the liberal principle of the treaty of 1785 was again

adopted.<sup>1</sup> It was not until 1856, at the Paris Congress, that by a declaration of April 16, the Powers recognized at last the principle that "the neutral flag covers enemy merchandise, with the exception of war contraband." The neutral vessel is part of the neutral territory. For the same reason that enemy merchandise deposited on land in a neutral port can not be declared legitimate prize, in the same way enemy merchandise on board a neutral vessel may not be captured. The admission of this principle incontestably marks a step in advance, and by itself is an important barrier raised against the barbarous law of maritime prizes.

§ 801.—The transportation of war contraband is forbidden. The belligerents have the right to prevent the providing and transporting of war contraband, even when carried on board neutral vessels or when furnished by neutrals.

1. Neutral commerce must not abuse its freedom, to give aid and assistance to the belligerents, for the reason that such assistance is the negation of neutrality. The word contraband (*contra bannum*) dates back to the middle ages, to the time when the Popes excommunicated those who furnished weapons to the infidels. The freedom of neutral commerce can not confer the right to support one of the belligerents. The nations at war can not tolerate traffic in contraband without running great risks; therefore they have the right to confiscate it, because the fact of importing it into the territory of the adversary presupposes on the part of the neutrals the intention of supplying help to the adversary.

2. The aforementioned rule is, in principle, recognized by all civilized States, and especially by the neutral States; see the armed neutrality of 1780 and the Paris treaty of 1856. But at all times there have arisen misunderstandings as to what should be understood by the term "contraband" and as to the means of preventing it. In her position as the first maritime Power, England sought as much as possible to extend the notion of contraband and the measures calculated to repress it. The neutrals, on the contrary, desirous to protect their commerce, have sought to restrict the term "contraband" to as small a number of objects as possible, and to reduce the harsh measures resorted to against nations trafficking in contraband. The two tendencies have been brought nearer each other gradually, although in the practice of the Governments differences may still be observed. All maritime Powers are interested in seeing that the commerce of the neutrals suffer as little as possible from war; they are therefore endeavoring to remove existing obstacles, not any one of them being certain that its interests may not some day be seriously injured by too violent repressive measures.

§ 824.—When the neutral State resolves to have neutral merchantmen escorted by war-ships and assures the belligerents that the ves-

<sup>1</sup>Wheaton, *International Law*, §§ 456, 469.

sels thus convoyed are not carrying contraband merchandise, no searching of the vessels shall take place. The war vessels of the belligerent Powers must content themselves with verifying the powers of the vessel commissioned by the neutral State to escort the convoy, and through its intermediary receiving the information of which they have need.

When the neutral State takes it upon itself to control and supervise the neutral vessels, when it designates a national vessel to accompany the convoy and guarantees that the convoy does not transport prohibited merchandise, it is entitled to have the honor of its flag respected; in such case, the search of the vessel must be omitted, since it is a mere measure of necessity and authorized by the laws of warfare only to remove all suspicion in regard to the conduct of the neutrals. This right has some times been controverted, especially by England. Neutral States may demand that they be believed upon their honor, since they are living in friendly relations with the belligerents. The armed neutrality of the northern Powers, with which may be compared the treaty of 1801 between Russia and England, formulated this principle as follows:

The declaration of the commanding officer of the vessel or vessels of the royal or imperial navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband merchandise, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers, hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralities and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

The two high contracting Parties, wishing also to prevent all subject of dissension in future, by limiting the right of search of merchant ships going under convoy, to those cases only, in which the belligerent Power might experience a real prejudice by the abuse of the neutral flag, have agreed:

1. That the right of searching merchant ships belonging to the subjects of one of the contracting Powers, and navigating under convoy of a ship of war of the said Power, shall only be exercised by ships of war of the belligerent Party, and shall never extend to letters of marque, privateers, or

other vessels, which do not belong to the imperial or royal fleet of Their Majesties, but which their subjects shall have fitted out for war.

2. That the proprietors of all merchant ships belonging to the subjects of one of the contracting Sovereigns, which shall be destined to sail under convoy of a ship of war, shall be required, before they receive their sailing orders, to produce to the commander of the convoy, their passports and certificates, or sea letters, in the form annexed to the present treaty.

3. That when such ship of war, having under convoy merchant ships, shall be met with by a ship or ships of war of the other contracting Party, who shall then be in a state of war, in order to avoid all disorder, they shall keep out of cannon shot, unless the state of the sea, or the place of meeting, render a nearer approach necessary; and the commander of the ship of the belligerent Power shall send a boat on board the convoy, where they shall proceed reciprocally to the verification of the papers and certificates that are to prove on one part, that the ship of war is authorized to take under its escort such or such merchant ships of its nation, laden with such a cargo, and for such a port; on the other part, that the ship of war of the belligerent Party belongs to the imperial or royal fleet of Their Majesties.

4. This verification made, no search shall take place, if the papers are found in form, and if there exists no good motive for suspicion. In the contrary case, the commander of the neutral ship of war (being duly required thereto by the commander of the ship or ships of war of the belligerent Power) is to bring to and detain his convoy during the time necessary for the search of the ships which compose it, and he shall have the faculty of naming and delegating one or more officers to assist at the search of the said ships, which shall be done in his presence, on board each merchant ship, conjointly with one or more officers appointed by the commander of the ship of the belligerent Party.

5. If it happen that the commander of the ship or ships of the Power at war, having examined the papers found on board, and having interrogated the master and crew of the ship, shall see just and sufficient reason to detain the merchant ship in order to proceed to an ulterior search, he shall notify such intention to the commander of the convoy, who shall have the power to order an officer to remain on board the ship thus detained, and to assist at the examination of the cause of her detention. The merchant ship shall be carried immediately to the nearest and most convenient port belonging to the belligerent Power, and the ulterior search shall be carried on with all possible diligence.

§ 825.—If upon the examination of the ship's papers a grave suspicion arises to the effect that the convoy is transporting contraband merchandise, a search of the suspected vessel may by exception be made by furnishing to the war-ship escorting the convoy the means of being represented while the search is being made. If the commander of the vessel or of the vessels of the belligerent Power believes that he has discovered contraband, he must notify the com-

mander of the convoying vessel, and the latter may direct an officer to accompany the inculpated vessel before the nearest prize council, and to take part in the discussions in the interest of neutral commerce.

1. The belligerent Powers must always see to it that their rights and their interests are respected. It may therefore not be required of them that, upon the testimony of the neutral State, they should absolutely renounce all subsequent search of the suspected vessels. It is possible that the neutral State itself may have been deceived, or that it may not have proceeded with sufficient care in examining the merchandise put on board. It may also happen that the belligerent Power and the neutral State do not agree upon the meaning to be attached to the word "contraband," that the former may view as contraband that which the latter does not believe is prohibited merchandise. The principles admitted in 1800, at the time of the second armed neutrality, are still in force (§ 824).<sup>1</sup> An excellent disposition is embodied in the treaty of 1801 between England and Russia:

It is in like manner agreed, that if any merchant ships thus convoyed should be detained without just and sufficient cause, the commander of the ships or ships of war of the belligerent Power shall not only be bound to make to the owners of the ships and of the cargo a full and perfect compensation for all the losses, expenses, damages and costs occasioned by such a detention, but shall, moreover, undergo an ulterior punishment for any act of violence or other fault which he may have committed, according as the nature of the case may require.

§ 830.—A blockade which is simply decreed and does not exist in fact, is not recognized; it is even so with regard to blockades by cruisers of no fixed station.

1. Blockades, not merely of definite ports but of a whole stretch of coast, are also authorized. In such case, cruisers are charged with maintaining a regular watch over such stretch of coast, on the condition that such cruisers are part of a fixed station. The armed neutrality of 1780 had formulated this principle as follows:

The name of blockaded port shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

The scope of this disposition was much modified in the treaty of 1801 between Russia and England, by the substitution of the word *or* in the place of the

<sup>1</sup>Heffter, § 170.

particle *and*, of the original text, and thus the door was again opened for blockades maintained by ordinary cruisers.<sup>1</sup> When Emperor Maximilian of Mexico declared all the Northern Mexican ports in a state of blockade, without placing maritime forces to that effect (July 9, 1866), President Johnson of the United States of America declared officially that he regarded the blockade as null and void (August 17, 1866).

§ 835.—The conditions under which the neutral vessel which has violated the blockade may be declared legitimate prize, are:

(a) That such vessel has had knowledge of the effective existence of the blockade;

(b) That it is captured while it attempts to run the blockade.

1. Note to (a) above. See Articles 821 and 832. The neutral vessel may not always plead the exception that while informed of the blockade, it endeavored to find out if such blockade was really effective. The State which blockades a port can not admit that without danger of being captured, a vessel should run the blockade under the pretext of examining the surroundings. If the circumstances, especially the great distance from the port of departure show that this excuse was not chosen to attempt to run the blockade, then the neutral vessel must be released.

2. Note to (b) above. As long as the neutral vessel confines herself to preparations for an attempt to escape, if favorable circumstances arise therefor, she may not be captured, because she has not attacked the blockade. She may give up the attempt; for the law of nations punishes not the intention, but the act. For the same reason a neutral vessel may not be seized so long as she remains at a great distance from the blockaded port, because she may still change her route and respect the blockade. She exposes herself to capture only if she comes near enough such port, thus giving evident proof of wanting to run the blockade.

3. Nations blockading a port must give credit to the neutrals for their good faith.

Bad faith or guilty intention may not be presumed, but belligerent States may not permit jeopardy of their rights by trusting to the good faith of everyone.

4. The armed neutrality of 1800 sought to establish even more severe principles. After having been warned, the neutral vessel could not be declared legitimate prize except when she had attempted to run the blockade by *force* or by *ruse*. This disposition was not embodied into the treaty of 1801 between Russia and England, and to-day proof is no longer required to show that the neutral vessel employed ruse or violence.

5. A very dangerous theory has been formulated by Judge Chase, in December, 1866, in the legal action relative to the English bark *Springbok*: "When a blockaded port is the destination of the vessel, the neutral vessel must be con-

<sup>1</sup>See Gessner, p. 167.

demned, even when preliminarily she touches at a neutral port, no matter whether or not there is war contraband on board." If this view were to prevail in practice, neutral commerce would be threatened to even a greater extent than by the blockades "on paper" fortunately abolished at this time, especially if one takes into account the fact that the neutral owners are obliged to appear before a foreign prize council, which is not strict in the matter of proofs, and which affords but few guaranties for the protection of neutral rights.

**DE BOECK:** *De la Propriété Privée Ennemie sous Pavillon Ennemi.*  
Paris, 1882.

Jean Barthélemy Charles de Boeck. Contemporary French publicist; born in 1856; associate of the Institute of International Law; doctor of law, 1882; licentiate in law, 1885; member of law faculty of Toulouse and later of Bordeaux where he taught Roman law, public international law and private international law. Among his writings are a revised and enlarged edition of Despagnet's *Cours de droit international public*, 1910, and a memoir, *Histoire du droit des neutres dans la guerre maritime*, which was awarded a medal of honor by the Institute of France in 1892.

*Page 55, § 55.*—1. Neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

2. The effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

3. As to the specification of the above-mentioned merchandise, the Empress holds to what is enumerated in the 10th and 11th articles of her treaty of commerce with Great Britain, extending her obligations to all the Powers at war.

4. To determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

5. These principles shall serve as a rule for proceedings and judgments as to the legality of prizes.

The foregoing constitute the proclamation of the rights of maritime neutrality, contained in the memorable declaration of the Russian Gov-



ernment, dated February 28, 1780.<sup>1</sup> Both neutrals and belligerents (from the latter must be excepted Great Britain) welcomed the Russian declaration. Austria, Prussia, Holland, Portugal, and the Kingdom of Naples forwarded their adhesion to Russia; similar action was taken by France, Spain and the United States. On July 9, 1780, a maritime convention was signed at Copenhagen between Russia and Denmark, and on July 21/August 1, an identical convention was concluded between Russia and Sweden. These two conventions in their Article 3<sup>2</sup> contained four propositions, the first three of which reproduced the principles formulated in the first four numbers of the Russian declaration: the fourth and last proposition states "that vessels may be detained only for just cause and when the facts are perfectly evident; that they shall be adjudged without delay; that the procedure shall always be uniform, prompt, and legal; and that, in addition to the compensation granted to vessels which have suffered loss without having been at fault, complete satisfaction shall in each case be rendered for the insult to the flag."—The armed neutrality was established.

§ 56.—The moment when this great charter of the rights of the neutrals was proclaimed, inscribed in the treaties, accepted by all the neutral Powers and by all the belligerent parties, with one single exception, was a solemn moment in the history of international maritime law. That which gives great authority to the system of neutrality is the fact that, according to the remark of Martens, the States which subscribed to this system, did not merely adopt it in their relations with Russia; "they adopted it also in their mutual relations, so that, for instance, after Russia had contracted in this respect with Denmark, Sweden in acceding thereto, contracted likewise with Denmark; the United Provinces of the Netherlands, by reason of their accession, recognized this system not only with regard to Russia, but also with regard to Denmark and Sweden; and in like manner, several of the other Powers that have since acceded thereto, such as Russia, Austria, Portugal, have by that very fact contracted rights and obligations toward each of the Powers that had acceded to the system before them; these conventions have therefore almost the force of a general

<sup>1</sup>*Post*, p. 273. Answer of the English Court, *post*, p. 282; of the French Court, *post*, p. 284; followed by the rest of the documents in relation thereto.

<sup>2</sup>*Post*, p. 311.

treaty between the different members of the association, although not identical in form."<sup>1</sup>

§ 57.—Before stating the immediate consequences of the first armed neutrality<sup>2</sup> let us give a rapid sketch of the events that brought about this famous attempt to restrict the maritime rights of the belligerents within wise limits.

The treaties of Paris and of Hubertsburg had renewed the treaties of Utrecht. But the American War of Independence gradually led to a general struggle between the principal maritime Powers of Europe: the first of these Powers which was the more directly interested in the question and which considered the Americans as rebels, pretended to forbid the neutral Powers to have any commercial relations with her insurgent colonies. The judges of the English admiralty—of whom Sir James Marriott was the most redoubtable adversary of the rights of the neutrals—applied in the matter of blockade and of war contraband the most elastic theories which were at the same time the most fatal to neutral commerce. British corsairs sure that but rarely, if ever, they would be condemned to the expenses of the trial, and even less to make compensation, became the scourge of this commerce. Hence the universal acclaim which welcomed the Russian measure.<sup>3</sup>

§ 58.—France, which with singular haste had on February 6, 1778, concluded with the United States a treaty sanctioning especially the inviolability of the neutral flag,<sup>4</sup> and against which England once more

<sup>1</sup>Martens, *Armatusurs*, pp. 158–159, note *m*.

<sup>2</sup>With regard to the origins of the armed neutrality, see the judicious reflections, supported by official documents, presented by Katchenovskiy, *Prize law*, additional note, pp. 70–72, as against the statement of Dohm and others currently accepted; especially Gessner, *Droit des neutres*, 2d ed., pp. 47–48.

<sup>3</sup>All the neutral Powers had reason to complain of England. See, for instance, two letters written by Joseph II to Count Belijioso, Minister Plenipotentiary to the Court of London, the one dated July 3, the other September 6, 1781; cf. Calvi, *Curiosita storiche e diplomatiche del secolo decimottavo*, Milan, 1878, pp. 430–431: the Austrian Emperor complains because the English violate the neutral flag.

<sup>4</sup>This act implied the recognition of the English colonies as an independent State and gave rise to discussions between the Cabinet of London and that of Paris. The arguments alleged by the French Government were decisive and proved that France was entitled to recognize the American-English colonies as a belligerent Power. Was France sufficiently entitled to recognize them as an independent State? This is quite a different question. The French Court does not seem to have well grasped the difference between these two points of view; it being furthermore rather difficult to justify this conduct, it is easily seen that it did not care to set forth clearly this difference.

opened hostilities in time of peace without a formal declaration of war,<sup>1</sup> made a different use thereof with regard to the neutrals.

The regulation of July 26, 1778, is generally regarded as recognizing the principle "free ship, free goods."<sup>2</sup> It has always been interpreted in this way because it guarantees to the neutrals the freedom of trading with the enemy. Messrs. Pistoye and Duverdy make statement to that effect in connection with the conclusions of the commissary of the Government and of the decision of the prize council which expressed and sanctioned the contrary idea (in the affair of Henri Moser against the *Héraclée*, 23 vendémiaire, year IX).<sup>3</sup> This regulation states precisely the cases of the seizure of neutral vessels: it has been stated that its Article 1 abrogated the regulation of 1744 which declared legitimate prize any article of merchandise grown or manufactured in enemy country (decision of the prize council of the 3 ventôse, year IX).<sup>4</sup> The dispositions of this regulation with regard to war contraband are still in force: the articles of war contraband only will be confiscated, unless they amount to three-fourths of the cargo of the vessel carrying them. Article 6 of the same regulation which reproduces the regulation of 1744 upon this point, in order to obviate fraudulent naturalizations, does not regard as neutral subjects enemy subjects who have not been naturalized neutrals at least three months before the declaration of war, or who have not transferred their domicile into a neutral country before this delay of three months; it decides that if the individuals who have been naturalized neutrals in any one of the cases where the legality of their naturalization is

<sup>1</sup>Along the coasts of France she attacked unexpectedly the frigates *Belle-Poule*, *Pallas* and *Licorne* and the lugger *Coureur*; the three last-named vessels were seized and sailed to England. See Ortolan, vol. 2, p. 21. England seized also eleven vessels from two ship-owners of Bordeaux, and this in time of peace: this fact secured for the two ship-owners *letters of reprisals*, dated June 29, 1778. See Ortolan, vol. 1, p. 357, and appendix L, pp. 466-467. In connection with these matters, Ortolan states on p. 358 of volume 1, that this is one of the last two instances, and perhaps the last one, which granted *letters of reprisals* in time of peace: "these letters," he justly states, "were the vestiges of times when the social forces were ill-established and ill-regulated, and when it was left to the individual to secure justice of his own authority and of his own might." The treaty of Versailles of September 26, 1786, between France and Great Britain, in its Article 3, did not abolish the use of these letters, but restricted it, by reproducing and defining precisely the dispositions of the treaty of 1632 concluded between the two Powers. This use is no longer resorted to.

<sup>2</sup>Wheaton, *Histoire*, 4th ed., vol. 1, p. 357; Gessner, *op. cit.*, p. 48, note 1.

<sup>3</sup>Pistoye et Duverdy, vol. 1, pp. 362-364

<sup>4</sup>*Ibid.*, pp. 360-361. In favor of his claim, the captor presented an order of the day from the Council of Five Hundred.

recognized by the regulation, return into the enemy country, there again to engage in commerce, they shall be treated as enemies, notwithstanding the neutral passports with which they may be provided.<sup>1</sup> Article 7, relative to enemy vessels which have become neutral vessels by reason of their sale to neutral subjects, is the textual reproduction of Article 10 of the regulation of October 21, 1744: this Article 7 of the regulation of July 26, 1778, whose origin is thus traced to an earlier period, being actually in force, we shall elsewhere take opportunity to criticise its excessive and unjust rigor. According to Article 14, vessels wrecked on the coasts of France shall be regarded as if they had been captured.<sup>2</sup>

Though this regulation was very imperfect, it marked a great progress and led to a considerable easement of the French practice. And in 1780, the French Government could with pride reply to the Russian Government that it had broken the road into which Russia was then entering, and that France was working in behalf of the freedom of the seas.

§ 59.—The armed neutrality had an almost immediate double result: it led France, Spain, Holland and the United States of America to adopt a policy at once moderate and equitable in regard to the neutral nations; and in the second place, though England took care not to recognize the principles sanctioned by the Russian declaration and by the treaties entered into between the Powers of the Baltic Sea, yet the armed neutrality made some impression upon her: in 1781 and in 1782, secret instructions were issued to the English privateers to moderate their zeal.<sup>3</sup> At the time of the peace of Versailles, England, Spain and France renewed the treaties\* of Utrecht.

§ 60.—What has been the influence of privateering upon the phases of the struggle during the five years of the American War of Independence? It appears to have been very small, if we are to judge by the figures furnished by Cauchy. According to this author, who was able to inform himself exactly upon the number of prizes made, either by national vessels or by privateers, during those five years, the number of vessels captured by privateers which sailed from French ports has not exceeded 566, whose total value amounted to 28,259,525 livres: the port of Dunkirk alone figures in this result for

<sup>1</sup>*Ibid.*, pp. 503-505.

<sup>2</sup>*Ibid.*, vol. 2, pp. 89 *et seq.*

<sup>3</sup>Katchenovsky, p. 64.

278 captures of a total value of 14,839,580 livres. The seizures made by the vessels of the royal navy amounted in value to not more than 14,000,000, and Cauchy concludes with "what influence could a loss reduced to these unimportant proportions have upon the commercial wealth of England?"<sup>1</sup>

§ 61.—Of the large number of treaties concluded after the first armed neutrality, the only one that should be mentioned here is that of September 10, 1785, between Prussia and the United States. Its Article 23 contained the following clause: "If war should arise between the two contracting Parties, all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessities, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested; and neither of the contracting Powers shall grant or issue any commission to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce."<sup>2</sup> This clause abolishes privateering and the capture of merchant vessels by the national war-ships; but it does not sanction the inviolability of enemy private property, except when such property is engaged in a purely peaceful commerce.

The treaty of 1785 formulated the same principle with regard to warfare on land; both for the latter and for maritime warfare it represented the expression of the firm convictions of the great philanthropist and statesman, less Utopian than has frequently been stated, who negotiated this treaty with Prussia: Franklin was the firm adversary of privateering and of capture, and he declared that the United States wished to have the abolition of this twofold institution inserted in its treaties, "though better situated than any other nation to profit from privateering."<sup>3</sup> In the treaties of 1778 with France and of 1783 with Sweden, both of which were negotiated by Franklin, we

<sup>1</sup>Cauchy, *Du respect de la propriété*, pp. 39-40 Cf. de Laveleye, *Du respect de la propriété privée en temps de guerre*, a report presented to the Institute of International Law (August, 1875), p. 32, note 1. During the war of American Independence, France once more returned to her traditional policy and to her most ancient laws (edicts of 1543 and of 1584), which she had given up in 1681 by way of reprisals against England, and respected the enemy boats used in the coastwise fishing: Letter of Louis XVI to the admiral in command of the French fleet, dated June 5, 1779. See especially Gessner, *op. cit.*, pp. 13-14. Azuni, *Droit maritime de l'Europe*, vol. 1, p. 182, recalls that during this same war England did not imitate the conduct of France.

<sup>2</sup>Ortolan, vol. 2, p. 66.

<sup>3</sup>Wheaton, *op. cit.*, vol. 1, pp. 372-373.

find no stipulation similar to that of the treaty of 1785, nor in the treaty negotiated by John Adams in 1782 with the United Provinces of the Netherlands. We are permitted to suppose that if Frederick II consented to sign a clause to the effect that enemy private property would be respected on land and on sea, it is because he felt that neither a maritime war nor a war on land was possible between Prussia and the United States of America: this impossibility, pointed to by all publicists<sup>1</sup> did certainly not escape the far-sighted King of Prussia, and it singularly weakened the authority of this treaty; it was moreover not renewed in respect of the clause relating to the inviolability of private property on the seas in the treaties of 1799 and of 1829. In spite of its ephemeral existence and the little authority of the declaration of principles which it contains, the act of 1785 is nevertheless an important precedent.

§ 62.—More important even, although it has had no more practical results, is the declaration which took place in France in 1792, in the legislative assembly, upon the twofold question of the abolition of privateering and the abolition of capture: it was the first time that a political assembly had taken up this matter.

As spokesman of the committees on diplomatic, naval and commercial affairs, Mr. Kersaint, deputy from Paris, read on May 29, 1792, the project of a decree relative to the suppression of privateers and the abolition of the prize law even though exercised by national vessels. The project read as follows: "The National Assembly, in consideration of the fact that war, being the highest act of the sovereignty of the peoples, can not be lawfully waged except by the nations themselves and not by private individuals and for their own account; in view of the fact that it is to the interest of all the civilized nations of Europe to proscribe and abjure the practice of war by corsairs or private ship-owners, because such practice necessarily entails the violation of property and of the law of nations, and by its nature not being subject to other rules than those of the blindest passion, that is to say, to avarice, it is frequently accompanied by acts of inhumanity; in view of the fact that privateering menaces equally the belligerent nations and the nations at peace; that, far from hastening the war to an end, it

<sup>1</sup>Martens remarked that a war between Prussia and the United States was improbable. This observation which is incontrovertibly true has been made by all the publicists. See especially Hautefeuille, *Propriétés privées des sujets belligérants*, pp. 10-12.

embitters on the contrary the peoples whose citizens it ruins ; that, fostering the spirit of injustice and the inclination to practice deceit and fraud, it is an obstacle to the development of the principles fit to ameliorate mankind ; in view of the fact that, if it is of importance to the maritime Powers mutually to protect themselves against the consequences of acts which the individual might attempt to perpetrate under the flag of the nations at war, acts whose consequences might lead to a general war, it is equally of importance to the honor of the French people to begin, by setting the example, a reform and a repression which to the French people are but a consequence of the rights of man and of the constitution, in the defense of which it has taken up arms ;

The National Assembly, realizing its duty of preventing and reducing the misfortunes immediately following in the trail of war by all means in its power, declares urgency in the matter.

After having decreed urgency, the National Assembly decrees :

Article 1. No commission shall be granted to arm for piracy.

Article 2. The owners of merchant vessels armed for their legitimate defense may not seize any enemy merchant ship, unless constrained thereto through provocation.

Article 3. National war vessels are forbidden to seize any private merchant ship belonging to the enemy nation, unless such ship be armed for war purposes. The National Assembly reserves unto itself to decide at an early moment upon the exceptions which might have to be made in applying this law to the different circumstances of the war.

Article 4. Upon their arrival in the ports, the crews of the corsairs taken by national war vessels shall be interrogated upon the demand of the public accuser and before the tribunal of the locality whither the said corsairs are conducted. If Frenchmen are found among the crew, their penalty shall be death ; and the subjects of the enemy nation shall be confined in prison for the duration of the war ; and as to the penalty to be inflicted upon corsairs not belonging to belligerent nations, action shall be taken in accordance with the conventions that may be entered into between France and the Powers to which they belong ; in the meantime they shall be detained in prison.

Article 5. Losses likely to be sustained by individuals through the act of corsairs under enemy flag shall be ascertained and attested by the commercial courts before which the parties are authorized to bring

action by all lawful means at their disposal; and the amount of the losses sustained shall form the object of a claim of indemnification, which shall be the preliminary to any adjustment or negotiation for peace.

Article 6. The National Assembly invites the king to approach the nations through the medium of his ambassadors, for the absolute suppression of piracy in maritime warfare, and to ensure, in so far as dependent on the French nation, the freedom of navigation and of commerce, which is a mutual usufruct of the peoples and their common ownership.<sup>1</sup>

§ 66.—A substitute project which met with the approval of the National Assembly confined itself to a proposal to be sent to the other nations for the abolition of piracy.

Mr. Emmery expressed himself as follows: "I come from a city which has fitted out the most of the privateering vessels; I assure you that the thousand or twelve hundred corsairs which it has armed in the course of the last war have inflicted more injury upon England than the combined royal navies of the two Bourbon houses. And still this city does not wish to continue to fit out such ships. I propose, therefore, that we request the king to enter into negotiations with the different Courts with a view to abolishing privateering, and to adjourn the projects that have been laid before you."

Vergniaux, who was a very influential member of the National Assembly, supported this motion, and proposed to draft the decree as follows:

"The National Assembly decrees that the executive be invited to negotiate with the foreign Powers in order that in the maritime wars that may arise in future, vessels fitted out for privateering shall be suppressed, and the free navigation of commerce ensured; it adjourns the other articles of the project of the decree presented by its committee."

The speech and the proposition of Vergniaux were approved by acclaim. Mr. Kersaint tried, but in vain, to answer: the Assembly closed the discussion and granted priority of consideration to the project of Vergniaux which was adopted almost unanimously (May 30, 1792).

§ 68.—In execution of the decree of May 30, 1792, Mr. de Chambonas, the French Minister of Foreign Affairs, sent on June 19, 1792,

<sup>1</sup>*Moniteur*, May 31, 1792, p. 632; the report of the discussion has been reprinted in *Pistoye et Duverdy*, vol. 1, pp. 7-14.



a circular letter to the French diplomatic agents directing them to open negotiations with regard to this decree: in this circular letter, privateering was qualified as "of barbarian usage whose most certain effect it is to impoverish the State by ruining the wealth of the citizens, and to add a number of private calamities to the public misfortunes."<sup>1</sup>

The Secretary of State of the United States of America, Mr. Jefferson, answered on October 16, 1792, the communication that had been laid before him by Mr. de Ternant, the French Minister: the United States is ready to enter into negotiations with France. "Our sentiments," said Mr. Jefferson, "have been declared in the treaty which you mentioned (treaty of 1785 with Prussia), *as well as in other political conventions that have not yet been confirmed. In these treaties there are even other principles which your Government would probably approve of as well as tending to decrease the occasions and the calamities of war.*"<sup>2</sup>

The French mission to London handed, on July 25, 1792,<sup>3</sup> a note to Lord Grenville, Secretary of State of Great Britain; this note was left unanswered.

The propositions to open negotiations and sent to the other Powers met with a similar fate.

Hamburg and the Hanseatic Cities alone accepted the French proposition unreservedly, and this act led to the issuance of a decree by the National Convention, March 29, 1793, abolishing privateering in regard to the said cities.<sup>4</sup>

§ 69.—Six months had scarcely passed by since the issuance of the decree of May 30, 1792, when on January 7, 1793, a rescript of the executive council warned ship-owners that "the maritime Powers of first rank not having answered the invitations extended to them for the purpose of suppressing privateering on the seas, such privateering was thus not forbidden by any law, and any Frenchman need only take counsel of his patriotism, in case of a conflict with one or several of those Powers."<sup>5</sup>

"Soon thereafter," declares Cauchy, "on the occasion of the breaking of relations with England, notice for the arming of privateers was

<sup>1</sup>Cauchy, *op. cit.*, Annex No. 2, pp. 87-88.

<sup>2</sup>*Ibid.*, Annex No. 3, p. 89; we do not know to what other treaties Mr. Jefferson refers.

<sup>3</sup>*Ibid.*, Annex No. 4, pp. 90-92.

<sup>4</sup>Ortolan, vol. 2, p. 67.

<sup>5</sup>Cauchy, *Droit maritime international*, vol. 2, p. 317.

given. They were supplied with all things that can encourage semi-mercantile and semi-warlike speculations." The national warehouses were opened to them (law of 23 thermidor, year III); to the captors was left the total product of their seizure (Article 25, law of February 1, 1792). Along with the admiralties, the prize tribunals were abolished: the decision in regard to prizes was referred to the courts of commerce and to the district tribunals (law of August 13, 1791; law of February 14, 1793).<sup>1</sup> More even than that, French consuls were clothed with such jurisdiction in neutral ports.<sup>2</sup> Praises were sung to privateering which had formerly been vilified: in official reports it was declared that privateering "the sort of war which develops courage and forms heroes" was, more than conflict between fleets, in conformity with "the policy of France"; privateering was to "revivify activity in the ports, and set immense amounts of money in circulation"; finally, it was to protect "the commerce of France and to annihilate" that of England (report of the Committee of Public Safety, 23 thermidor, year III).<sup>3</sup>

§ 70.—By conferring prize jurisdiction upon the ordinary courts, the rights of neutrals were compromised. But these rights were subsequently attacked even more vigorously in the duel between France and England.

In the first place, the National Convention confirmed laws previously enacted with regard to maritime prizes, and therefore, the regulation of 1778 as well; to the French corsairs it issued instructions enjoining them to respect the neutral flag.<sup>4</sup> With Prussia, Austria, Spain and Russia which were her allies, England from the beginning concluded conventions by the terms of which the said Powers were to prohibit to France the exportation of wheat and any other food stuffs; furthermore, they obligated themselves, in order the more certainly to attain the object in view—to starve France—to do their utmost with regard to the neutral Powers in order to induce them to adopt similar measures. France answered with the decree of May 9, 1793, which ordered

<sup>1</sup>The public treasury was even charged with the expenses to which ship-owners should be condemned for illegal prizes. Cauchy, *Du respect de la propriété privée*, p. 40.

<sup>2</sup>According to Büsch, cited by Katchenovsky, p. 78, note *k*, it would seem that French consuls frequently were part owners in the vessels armed for piracy, a fact which could hardly capacitate them as impartial judges.

<sup>3</sup>Cauchy, *Droit maritime international*, vol. 2, p. 318.

<sup>4</sup>Katchenovsky, p. 74; Martens, *Recueil*, 1st ed., vol. 5, pp. 376-400; vol. 6, pp. 752-76. Cf. the *Codes de prises* published toward the end of the last century or about the beginning of the present one by Lebeau, Guichard, Dufriche-Poulaines.

the seizure and conduct to French ports, of neutral vessels loaded with food provisions destined for England, together with any other vessel carrying English merchandise: provisions belonging to neutrals shall be subject only to the right of preemption and the value thereof shall be paid to the owners; enemy merchandise shall be confiscated; apart from this, neutral vessels shall be released.<sup>1</sup> The decree of June 9, 1793, declared legitimate prize, without even the form of legal action, any vessel belonging to any of the Hanseatic Cities; but as early as August 16, the National Convention rescinded this action and decided that judgment with regard to such prizes would be rendered by competent tribunals. The treaties concluded by France with Sweden, with Denmark and with the United States of America, were respected. England answered these reprisals of which she had been the cause, by new reprisals: the Orders in Council of June 8 and November 6, 1793, extended to all neutrals the right of preemption, and declared as legitimate prize any vessel carrying products from the French colonies or food stuffs to the said colonies: in addition to this, secret instructions were issued to the English corsairs.<sup>2</sup>

§ 71.—Danish commerce in particular suffered heavy losses. In the twinkling of an eye, so to say, it was almost annihilated. As early as August 19, 1793, 189 Danish vessels had been seized; indemnities that were to follow this exercise of the right of preemption were not forthcoming.<sup>3</sup> And in this situation, after having refused to join Great Britain and her allies to starve France, Denmark had to pledge herself not to convoy Danish vessels *en route* to France, compelled, according to the expression of her illustrious Minister, Bernstorff, "to forsake the domain of the universal and private law of nations." Deprived of the natural support of Russia, which she had almost had a right to expect, Denmark concluded with Sweden, March 27, 1794, a convention confirming before Europe their intention of remaining neutral in spite of the suggestions of the allies; its object was to protect Danish and Swedish commerce. A combined fleet of the two countries was to be stationed in the Sound.<sup>4</sup>

§ 72.—Seeing its commerce and agriculture threatened by this Eng-

<sup>1</sup>Guichard, *Code des prises maritimes et des armements en course*, vol. 2, pp. v-1, a dissertation upon prize legislation.

<sup>2</sup>Katchenovsky, p. 75.

<sup>3</sup>*Ibid.*; Lucchesi-Palli, *Principes de droit public maritime*, translated by A. de Galiani, Paris, 1842, p. 95.

<sup>4</sup>*Post*, p. 440.

lish policy, the United States of America, on September 7, 1793, had complained to England. The Order in Council of June 8, 1793, had been revoked, and the treaty of 1794 concluded, when in April, 1794, a new Order in Council subjected all vessels loaded with provisions for France to the right of preemption. This Order in Council gave subsequent rise to the appointment of a mixed commission.<sup>1</sup> But the conclusion of the treaty of 1794 had caused great irritation in France. As early as 1793, France had treated American vessels the same as England had. This had been decided in a general way with regard to all neutral Powers, by the decree of the 14 messidor, year IV: it informs all neutral or allied Powers "that neutral vessels, either with regard to confiscation or visit and *préhension*," will be treated in the same "manner as they will permit England to treat them." The same decree ordered "the search of American vessels which, according to the treaty between the United States and England, might require measures of reciprocity"; this measure is extended to include all neutral vessels "upon which England had arrogated unto herself rights of search and of *préhension*." Furthermore, the decree of the 12 nivôse, year IV (May 2, 1796), based upon the treaty between England and the United States, declared that: (1) All enemy merchandise or such other merchandise as has not been shown to be absolutely neutral, and carried under the American flag, shall be confiscated, but the vessel shall be sold. (2) To the articles of war contraband indicated under Article 24 of the treaty between France and the United States of February 6, 1778, four new articles of merchandise and naval munitions are added.<sup>2</sup> (3) Any American bearing a commission conferred by the enemies of France, and any sailor of this nation included in the crew of enemy vessels is considered a pirate or subject to being treated as such. (4) Any American vessel not keeping its crew list in due form is regarded as legitimate prize.<sup>3</sup> By the Morfontaine treaty of 1800, France and the United States were first reconciled on the basis of the true principles: the stipulations of the treaty of 1778 were renewed, especially the one sanctioning the inviolability of the neutral flag.<sup>4</sup>

<sup>1</sup>Wheaton, *op. cit.*, vol. 2, pp. 40-47.

<sup>2</sup>This was done in order to uniformize the treaty with Article 18 of the treaty of 1794 between England and the United States.

<sup>3</sup>This document referred to already was included in Guichard's *Code des prises*; he has gathered them together in his dissertation to which reference has already been made.

<sup>4</sup>Martens, *Recueil*, 2d. ed., vol. 7, pp. 96 *et seq.* The Morfontaine treaty was signed at Paris, September 30, 1800.

§ 73.—Before this time, the rigors of English and French policy increased from year to year. In 1794, Sir James Marriot proposed the rule of which he was the inventor, that neutral nations were merely entitled to transport their products, and not those of other countries.<sup>1</sup> The law of the 29 nivôse, year VI, declared that "the status of the vessels, in so far as their quality as neutral or enemy vessels is concerned, shall be determined by their cargo; therefore, any vessel met with on the high seas, loaded in full or in part with merchandise coming from England or from her possessions, shall be declared legitimate prize, no matter who might be the owner of such provisions or merchandise."<sup>2</sup> If with this law, we compare, according to the observation of Guichard, the law of the 10 brumaire, year V, which *classes* as coming from English factories, *no matter what their origin*, all merchandise and materials included in a very long list inserted into that law, "there will hardly be left any articles of merchandise of the most common kind and most necessary to the everyday needs of civilized societies, and which, imported from abroad, might not be included in this sort of general proscription, no matter on what vessel it might be loaded."<sup>3</sup>

§ 74.—These harsh measures, it seems, did not satisfy the avidity of the corsairs. It will be remembered that under the Directory, the Council of Five Hundred had to interpret the laws in reference to prize matters and in all other matters: to this end it issued orders of the day. "I have known," says Berryer, Sr., in his *Souvenirs*, "that corsairs knew how to secure in the early hours of the morning, from the Council of Five Hundred, even before all the members had assembled, orders of the day interpretative of the law discussed with them. These secret orders of the day were straightway taken to the attorney general who availed himself thereof to issue decisions against the neutrals. One day I was the personal witness of such a secret order of the day being presented by a man who I had reason to believe was a deputy from Southern France. He secured the immediate attention of the commissary of the Government who was about to address the audience, and leaning on the railing of the enclosure where the commissary was seated, and having handed him a paper, he whispered to him, his two hands being placed upon the

<sup>1</sup>Katchenovsky, p. 77, note i.

<sup>2</sup>Guichard, vol. 2, p. xli.

<sup>3</sup>*Ibid.*, p. xlii. Law of the 10 brumaire, year V, Article 5, vol. 2, p. 351.

documents of the case being heard, and displaying two large diamonds which he wore one each on his little fingers. Aroused by his strange appearance, I rushed to where the commissary was seated and there, not being able to restrain myself because of the perfidious act of which my client was going to be the victim, and even before I had asked the messenger what this interpretation portended, I exclaimed loud enough to be heard: *Solitaire rhymes with corsair*. Without waiting for any further explanation, the deputy messenger left the room precipitately, and I then learned that this man had laid before the commissary an order of the day which settled my case."<sup>1</sup>

§ 76. The regularization of privateering—using the expression of the Directory—could not be effected so long as the disorder and confusion surrounding the prize decisions had not come to an end; for after having been, for some time, within the sphere of the powers of the committee of public safety, jurisdiction over prizes had, as has already been stated, been transferred to the ordinary courts; and the commissaries sitting in these courts were authorized to appeal to the Government in those affairs which might require the interpretation of treaties and in which the decision of the courts might compromise the rights of some friendly or neutral Government. But the courts were not pleased with this measure and evidenced hostility in regard to it, some of them, in spite of all, deciding cases in which the commissaries had appealed to the Directory, while others asserted that it was incumbent upon them and not upon the commissaries of the Government to decide whether or not it was necessary to refer the case.<sup>2</sup> This matter had to be settled once and for all: the decree of the consuls of the 6 germinal, year VIII, settled it by the creation of the prize council.

§ 77.—In the meanwhile, and as a result of famous discussions between England and Sweden and especially Denmark, in regard to the search of convoyed vessels, the second armed neutrality was concluded. On December 4/16, Russia signed at St. Petersburg with Sweden and with Denmark two identic conventions of armed maritime neutrality. Two days later, December 6/18, there was concluded between Russia and Prussia a third convention of armed maritime neutrality. Through their Article 3, these treaties sanctioned, enlarging them at the same

<sup>1</sup>This quotation from the *Souvenirs* of Berryer, Sr. (vol. 2, p. 42) is taken from Pistoye et Duverdy, vol. 1, pp. 360-361.

<sup>2</sup>Pistoye et Duverdy, vol. 2, p. 158. Cf. pp. 149-158, regarding the prize decisions from 1793 to the year VIII.

time, the principles proclaimed in 1780.<sup>1</sup> This article completed the theory about blockades, and completed it in such manner that it may be accepted even to-day in the manner in which it was settled by the second armed neutrality. It settled the question of convoyed vessels so that they were exempt from the right of search upon the declaration of the officer in command of the convoy. The conventions of 1800, even as the acts of 1780, are silent upon the question of neutral property on board enemy vessels: the matter is of only secondary economic importance as compared with that of the inviolability of the neutral flag; this is the reason no doubt why it did not challenge greater attention at the time or left its solution to the pleasure of the belligerents.

England answered to the second armed neutrality with her Order in Council of January 14, 1801, placing an embargo upon Russian, Danish and Swedish vessels,<sup>2</sup> and by the bombardment of Copenhagen (April 2, 1801).

This last-mentioned event and the murder of Emperor Paul I brought about the dissolution of the armed neutrality of 1800.

§ 78.—Between Alexander I and Great Britain there was concluded on June 5/17, 1801, the maritime convention of St. Petersburg. Article 3 and Article 4 of this convention include all the questions of neutrality. A single one of the propositions interests us: it is the one reading as follows: "The effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property; and it is agreed not to comprise under the denomination of the latter, the merchandise of the produce, growth, or manufacture of the countries at war, which should have been acquired by the subjects of the neutral Power, and should be transported for their account, which merchandise can not be excepted in any case from the freedom granted to the flag of the said Power."<sup>3</sup> This is a most remarkable clause.

Denmark and Sweden were to be invited by the Emperor of Russia, in the name of the two contracting Parties to accede to this treaty. Mr. von Bernstorff went in person to London in order to try and secure modifications to the treaty;<sup>4</sup> his efforts proved fruitless and

<sup>1</sup>Convention between Russia and Sweden, *post*, p. 531; convention between Russia and Denmark, *post*, p. 537; convention between Russia and Prussia, *post*, p. 544.

<sup>2</sup>Wheaton, *op. cit.*, vol. 2, p. 85; *post*, p. 558.

<sup>3</sup>*Post*, p. 595.

<sup>4</sup>Lucchesi-Palli, pp. 151-152.

the Copenhagen Court had to subscribe to the St. Petersburg maritime convention on October 23, 1801. Sweden acceded to it on March 18/30, 1802. Prussia never subscribed to it. The St. Petersburg convention seemed to dissatisfy everyone. In the English Parliament, Lord Grenville, who had just resigned from the Ministry, attacked this convention vigorously; he accused the Ministers of having betrayed the interests of Great Britain and of having cleared the arsenal of the English maritime law. The Ministry set forth the difference between the convention of 1801 and the conventions of 1780, notwithstanding the similarity in the words pointed to by Lord Grenville; the Ministry alleged in particular that the English theory of blockades had in no wise been undermined. Lord Grenville maintained that the substitution of the word *or* in the place of *and* (vessels stationed *or* sufficiently close to each other) was of the utmost importance, but he declared that a mistake had been made in not laying greater stress upon such an important point.<sup>1</sup> The convention of 1801 was, furthermore, never rigorously enforced. Russia solemnly renounced it in 1807.

§ 79.—The convention of 1801 has some times been made to appear as an equitable transaction. The conventions of 1780 and 1800 proclaimed four great principles; the convention of 1801 recognized but two.<sup>2</sup> It seems to us that this is a superficial and incorrect way of looking at things. Along with the conventions of 1780 and of 1800, the convention of 1801 accorded to the neutrals free access to enemy ports; along with the conventions of 1780 and of 1800, it defined war contraband in an exact and reasonable manner, perhaps with the exception of that part of it which refers to sulphur and saltpeter. But (1) it admitted that the blockade need not be effective in order to bind the neutrals; it implicitly rejected the necessity of a special notification; (2) it subjected convoyed vessels to the right of search (on the part only of war-ships, it is true, and not of corsairs); (3) officially it authorized the seizure of enemy merchandise under the neutral flag. These are the three main differences between the acts of 1780 and 1800, and the convention of 1801: the former safeguarded neutral rights, the latter placed them in jeopardy.

§ 80.—Thus, not only had the movement inaugurated in 1780 been

<sup>1</sup>Speech of Lord Grenville, November 12, 1801. See especially Wheaton, *op. cit.*, vol. 2, pp. 94-105.

<sup>2</sup>Thiers, *Histoire du Consulat et de l'Empire*, vol. 3, p. 116. Cf. the excellent thoughts upon this matter by Cauchy, *Droit maritime international*, vol. 2, pp. 344-349.



stopped by the wars of the French Revolution, but even a serious attempt and for which the hour had seemingly been well chosen, for affirming and effectively sanctioning neutral rights which were threatened by the encroachments of the belligerents, had been completely wrecked. The peace of Lunéville had not renewed the treaties of Utrecht. The peace of Amiens, in 1802, was equally silent upon this matter; France had proposed to regulate at least some matters relative to international maritime law; England peremptorily refused to follow the example. Lord Hawkesbury wrote to the English plenipotentiary at Amiens: "His majesty will never by a peace treaty surrender the means that may be deemed necessary for the safety of his States in time of war."<sup>1</sup> The fate of the neutrals and the delimitation of the laws of maritime warfare were placed in the care of the prize courts of the belligerents.

**BOYE:** *De Væbnede Neutralitetsforbund et Avsnit av Folkerettens Historie.* Christiania, 1912.

Thorvald Boye. Contemporary Norwegian publicist; born in 1871. With the aid of a scholarship from Christiania University Boye went to London in 1905 to pursue studies in international law, and while there, as a student of the London School of Economics and Political Science, gained access to the English Public Record Office for the purpose of examining the correspondence of the admiralty and foreign affairs from the close of the eighteenth century. In 1906 and 1907 he continued his studies at Copenhagen and in 1909 at Stockholm. As a result of these studies he wrote *De Væbnede Neutralitetsforbund* which was published, under the auspices of the Norwegian Nobel Institute and the Finnish Legation, at Christiania, Copenhagen and Stockholm.

§ 45, page 142.—Since 1773 Count Andreas Peter Bernstorff had been Minister of Foreign Affairs in Copenhagen.<sup>2</sup> He had in all essentials understood the policy of his uncle J. H. E. Bernstorff: to work

<sup>1</sup>See especially Johnstone, *Handbook of Maritime Rights*, ch. 8, p. 79.

<sup>2</sup>Andreas Peter, Count of Bernstorff, was born August 28, 1735, on his father's estate of Gartow, near Lüneburg in Germany. He was the nephew of the older Count J. H. E. Bernstorff, at whose suggestion he entered the service of Denmark. He died on June 21, 1797.

for the preservation of peace and neutrality.<sup>1</sup> On account of the important Danish-Norwegian commercial and maritime interests, he was careful to see to it that his Government was on good footing with England.

Acceding to a request from England, the Danish-Norwegian Government had already, on October 4, 1775, issued a royal ordinance which, under penalty, forbade the ships that flew His Majesty's flag to transport ammunition or war armaments to the provinces in North America, which were at war with England.

Because hostilities with France had broken out and some Danish-Norwegian ships had been captured by English cruisers, Bernstorff gave instructions to Dreyer,<sup>2</sup> the Danish-Norwegian Ambassador in London, to give his assistance to the captured ships and to have proper representations made to the English Government. He continued his correspondence with the Ambassador till the summer of 1778, urging him to cooperate with the Swedish and Dutch Ministers in London to secure better terms for neutral navigation because the interests of the country demanded it.

Moreover, Count Ulrik Scheffer, the President of the Swedish Council, who was then Minister of Foreign Affairs, had opened negotiations in London to secure better treatment for Swedish commerce and navigation. Even before the maritime war with France had begun, the President of the Council, in May or in June of 1778, had sent a suggestion to Nolcken, the Swedish Minister at London, to do his best to see that Englishmen should not seize Swedish merchant ships carrying freight to enemy country, and that Swedish ships might at least enjoy the same rights with regard to England as Englishmen wished to have with regard to Sweden in case Sweden were waging war and England were neutral. The Swedish regulation for war-ships and munition transports of July 28, 1741,<sup>3</sup> even as the English, had not permitted neutral ships to transport enemy merchandise, but it had permitted neutral ships unhindered navigation to and from enemy country with any merchandise, excepting war contraband. According to the practice which the English prize laws had previously followed, this would meanwhile totally ruin Swedish trade with France. Scheffer

<sup>1</sup>See Aage Friis, *Andreas Peter Bernstorff og Ove Hoegh Guldberg*, pp. 48, 170 *et seq.*

<sup>2</sup>Appointed, August 28, 1778, Envoy Extraordinary to London, after he had been Minister Resident since May, 1777.

<sup>3</sup>See Boye, p. 83, note 1.

stated that it would be more advantageous for both parties to enter into an agreement for the recognition of the principle: free ship, free merchandise. Such an agreement would be especially useful to England because of her considerable trade and navigation in the Baltic Sea. Again, the Swedish Government wished for a more precise definition of the term "war contraband" than appeared in the treaty with England of October 21, 1661. The English had indeed classed timber, iron, pitch, tar and other material for ship-building, as war contraband, whilst they should be included as per Article 11 of the treaty under *commeatus* (that is to say, free supplies).

The Swedish Government declared that the said articles could not be classed as contraband. If raw material of which contraband is manufactured should be classed as such, then wool, flax, hemp, and even all of nature's products might likewise be included among contraband. But such a principle was in conflict with the law of all nations in regard to the trade with and navigation to open ports.

Through the Danish-Norwegian Ambassador in London, Bernstorff was informed of the representations which the Swedish Ambassador had made to the English Government. Since Sweden took essentially the same position toward England as Denmark-Norway, this proved of interest to Bernstorff and he sought to secure more detailed intelligence as to how the Swedish Government would act in future. He did this with cleverness and decision; and it was desirable that the Swedish Minister in London should be given the same instructions as the Danish-Norwegian. In a memorial of August 25, 1778, Bernstorff therefore gave to Guldencrone, his Ambassador at Stockholm, orders to investigate how the Swedish Government would consider the eventual question of a "concert" toward England. Bernstorff declared in his memorial:<sup>1</sup>

The war between England and France puts every neutral flag into very great danger. Such flag should not be exposed thereto except as it might protect transportation of war munitions to the countries actually in conflict: any other merchandise in destination for ports not blockaded should be respected. France will surely act in conformity with these principles, but has pledged herself thereto for only six months unless England likewise observes them. Very reluctantly I fear that England will not do so: experiences of the past do not reassure me and recent acts make me fear for the

<sup>1</sup>Taken from the archives of the Danish Ministry of Foreign Affairs.

future. Holland, Sweden and Denmark are evidently the parties most interested. They would lose the real benefit of their neutrality if they should not be able to make it respected. They may possibly do this through a concert established with wisdom and sustained with firmness, but I can not help seeing the difficulties of doing so, and these difficulties are sufficiently great not to permit me to commission you to proffer ministerial overtures in regard thereto. I must confine myself, Sir, to requesting you to get the Swedish Minister to speak upon this matter and if possible to get an insight into his own sentiments and into those of his master. You may agree that this aim is much in our thought, that we will put all our resolution to it as circumstances may make necessary, and that the Ministers of the King in France and in England have already been instructed to show themselves favorable to any such concert as the Ministers of Holland and of Sweden might propose and wish for in the occurrences in which the same interests and the same principles are to be protected. I do not foresee that the predilection of France for Sweden will exercise much influence in the present case. Exceptions can not be avoided, and for this reason I believe that Sweden finds herself in exactly the same embarrassments as we do. It is not yet proper to proceed any further and I shall await your answer and the sure hints which time may bring forth ere long when I shall again communicate further with you.

Because a large number of merchant ships, the most of which belonging to Denmark-Norway, Sweden and Holland, were captured and taken to English ports in anticipation of their being disposed of according to the prize law, both the Danish-Norwegian and the Swedish Minister in London protested to the English Minister of Foreign Affairs in regard to the said seizures. They stated that it was unjust to seize merchant ships which had had no knowledge of the existence of the state of war. Since the war had been begun without a declaration of war, it had not been possible in the proper time to issue acts of notification to the merchants to that effect. The Dutch and the Prussian Ministers likewise protested.

An answer was given to all on October 19, 1778. The Danish-Norwegian, the Swedish and the Prussian Ministers received uniform notes<sup>1</sup> containing explanations to the effect that the captured neutral ships would be released, although they were loaded with merchandise

<sup>1</sup>See C. A. Zachrisson, *Sveriges underhandlingar om beväpnat neutralitet*, 1778-80, p. 3 and annex 4. E. Holm, *Om Danmarks deltagelse i förhandlingene om en væbnet neutralitet fra 1778-1780* in *Dansk Historisk Tidsskrift*, III r., vol. 5, p. 5.

which was prohibited or belonged to the enemy. The English Government would retain all the "naval munitions" (objects which were used to build or fit out ships) to be paid for at their full value, in so far as they did not belong to the enemy. The cargo which belonged to the enemy would remain confiscated, but the neutral ship would be paid the freight charges. This condition of things would however not extend beyond November 10, 1778. Captures which should be effected after that time, since knowledge of the war must then be supposed to be abroad, would be taken for trial by the English prize judge who would render his decision conformable to the law of nations and to the principles set forth in the treaties.

The note which was handed the Dutch Minister was somewhat different from those aforementioned. Through her treaties Holland was to a certain degree differently situated with regard to England than the other countries.<sup>1</sup>

§ 46.—The English note of October 19, 1778 contained no satisfactory answer to the complaints which the neutral Powers had presented with regard to the captures made by cruisers.

Neither the Danish-Norwegian nor the Swedish Ambassador in London was satisfied that the English Government, although it conceded that neutral ships could not be informed of the outbreak of war between England and France, did not set them free with their cargoes. They were not satisfied with the proffer of payment for "naval munitions" and other merchandise classed as contraband nor for the freight charges for the confiscated French cargoes.<sup>2</sup>

Especially were they dissatisfied with the fact that the English note did not contain precise rules regarding the principles which in future should form the basis for decisions of the prize court. It did not set forth how England would alter her former practice: with the help of her marine and her numerous privateers fully to ruin the trade with the enemy country and thereby to weaken its power of resistance.

Bernstorff knew full well how English cruisers had acted in previous wars, especially in the Seven Years' War, and how they had ruined neutral navigation. During the year 1757 he had sojourned in London,<sup>3</sup> and through numerous actions before the admiralty court he had become acquainted with the rules in regard to captures which the

<sup>1</sup>See Holland's treaties of 1668, 1674 and 1716 with England.

<sup>2</sup>See Zachrisson, *loc. cit.*, pp. 5-6; Holm in *Historisk Tidskrift*, *loc. cit.*, p. 5.

<sup>3</sup>See Eggers, *Denkwürdigkeiten aus dem Leben des A. P. v. Bernstorff*, p. 18

English corsairs and war-ships followed in waging war, and which made neutral navigation with that land almost impossible.

Her conduct in this respect was now about the same as it had been during the Seven Years' War. In the Ministry of Foreign Affairs Bernstorff had rich material in the decisions of the practice with the English prize laws, and in the report by Hübner he had a good guide to find out in what direction the English rules ought to be changed.

In his letters to the Danish-Norwegian Ambassador in London, Bernstorff repeatedly set forth the principles which the Ambassador should insist upon with the English Minister for Foreign Affairs. Among other things, he wrote as follows in his communication to him of November 7, 1778:<sup>1</sup>

A war does not confer the slightest right to cause evil or loss to, or to injure in the slightest manner, any non-enemy Powers. Belligerent peoples without jurisdiction with regard to neutral nations, and without any offense on their part, have no power whatever in time of war any more than in time of peace to interfere with any part of their commerce, either with regard to the nature of the merchandise or relative to their commerce outlets. Contraband articles alone are an exception to this principle. By this term we understand that which is of direct and immediate use in war and which could neither be sold nor supplied when transported to the belligerent Parties, without offending the rights of neutrality. There must be no incertitude with regard to this matter: neither the English judges nor the subjects of the neutral Powers must be left in the dark upon this question. And in order to remove it forever from the sphere of incertitude we shall gladly and unrestrictedly adopt that which the peace of Utrecht and the treaties of England with the Hollanders—especially that of the year 1674—determine in this respect, with the sole condition of profiting equally and conformably with the tenor of our treaty, by any more advantageous concession which England might grant to Holland in this respect.

We shall furthermore admit that a neutral nation is not entitled to enter, even with a non-prohibited cargo, any vessel whatever, into a besieged and blockaded city or port; it will be necessary to define the meaning of this word; there is but one natural meaning to it, to the effect that when a considerable number of vessels are established before a port in order to cut all communication therewith from the direction of the sea, then all the approaching avenues are held to be within the power of the attacking party; but

<sup>1</sup>Taken from the archives of the Danish Ministry of Foreign Affairs for 1778.

this definition can not be absolutely applied to a general and indeterminate cruising area embracing a long extent of coasts and of country, and you will please neglect nothing to come to an agreement with the Ministry in regard to this matter in accordance with the principles I have just set down.

There is still another principle of which I have to inform you and which we insist upon, Sir, and which was formerly generally acknowledged, but which, on account of the extreme policy observed in the last wars—a policy which is characterized by a dominating and oppressive spirit—(has rendered) the felicities of the peoples very precarious and has seemed to be controvertible: it is the principle that the flag shall protect the merchandise.

We can not give up this principle. It is inherent in the natural law since it belongs to the freedom of navigation of a neutral Power and especially because every one agrees that the properties of any nation at war are safe when they are within a neutral territory; and a neutral vessel is absolutely the equivalent thereof. It has frequently been acknowledged even by England, notably in the treaties between Great Britain and Holland of 1674, and of 1713 between her and France, as well as with Sweden in 1667, and she has even vigorously asserted and demanded it in subsequent times when Charles XII, desiring to act contrary thereto, had some English vessels seized. She likewise continues right along in this practice with regard to the Turks and the Moorish Powers, and if it were necessary to go further in such searches, I am sure that history would furnish innumerable examples thereof. Our thesis shall always be that a Danish vessel, declared as such by the passports and other sea documents in due form, must be free from all seizure, although her cargo might be directed to the enemies of England and for their account, always excepting the case that the ship is carrying prohibited merchandise. . . .

The visits on the open seas were not to extend beyond the examination of the documents belonging to the vessel: the question is of assuring one's self that the vessel is neutral, that her papers are in due form, and that her cargo does not consist of war munitions; this right is just and we shall not dispute it.

From this we see that A. P. Bernstorff was greatly swayed by the views which had been held by Hübner about the neutral's right in regard to his commerce and navigation, and that he agreed with Hübner's proposition to change the English principles as follows:

That enemy merchandise with the exception of war contraband should be free on neutral ships;

That war contraband should be restricted to purely war necessities

(in agreement with the provisions of the Utrecht treaty) and precisely defined, so that in future all uncertainty might be removed;

That a port should be regarded as blockaded when there shall be stationed in front of it a sufficient number of war-ships to preclude any connection whatever with the sea;

That neutral ships must be permitted to sail to and from enemy countries;

That visit should be confined to an examination of the ship's papers.

§ 17, page 150.—In the summer of 1778, American privateers appeared in the North Sea and seized English merchant ships on their way to Archangel. When the report from the governor in Archangel reached St. Petersburg stating that Russian merchandise on an English ship had been seized by American cruisers, the Russian Empress Catherine II became very angry,<sup>1</sup> because the trade with Archangel had been interfered with. As Russia was in close political relations with Denmark-Norway which was even to a still greater degree interested in the matter of not letting neutral navigation and commerce be disturbed, it was but natural for the Russian Government to address a communication to Copenhagen. The English Ambassador in St. Petersburg had likewise exerted himself for a common action by Russia and Denmark-Norway with regard to the American cruisers.

The Russian Chancellor, Count Panin, directed Sacken, the Russian Minister in Copenhagen, to enter into negotiations with the Danish-Norwegian Government to discover how to prevent that sort of "piracy." A Russian note of August 28, 1778<sup>2</sup> requested the Danish-Norwegian Government to enter into an alliance with Russia for the inviolability of navigation in that part of the northern icy sea which was open to the two sovereign lands, and Russia proposed that Russia and Denmark-Norway should together equip a fleet of the same size for the next expedition to cruise in the northern waters.

Meanwhile the Danish and Norwegian vessels were not so much in dread of the American cruisers as they were of the by far more numerous English. Bernstorff wished therefore to extend the Russian proposition for an alliance between Russia and Denmark-Norway for the defense of neutral commerce as a connected whole.

§ 51, page 160.—When in August, 1778, Bernstorff had set into

<sup>1</sup>See letter written by Catherine II, August 11, 1778, to Grimm, cited by Berghoim, *Bewaffnete Neutralität 1780-1783*, p. 79.

<sup>2</sup>See Holm in *Historisk Tidsskrift*, loc. cit., pp. 14-15.



motion in Stockholm negotiations for common action toward England.<sup>1</sup> it was not his object to have his country become a party to an armed neutrality. Such an alliance between Sweden and Denmark-Norway would rouse great ill-will in England, and Bernstorff's plans to secure from the English Government concessions for Danish-Norwegian commerce and navigation might thereby easily go for naught.<sup>2</sup>

Were the English Government to get the impression that Denmark-Norway supported French interests and took sides against England, then the Danish-Norwegian Minister in London would be unable to accomplish anything.

In the meanwhile, the French Government, through its Ministers in Stockholm and Copenhagen, endeavored to get the Scandinavian States to unite and to form an alliance as in 1756, and to equip fleets for the protection of merchant ships against the English cruisers.<sup>3</sup> The Swedish Government was much in favor of the plan for a concerted action by the Scandinavian States.

§ 52, page 167.—In the month of February, 1779,<sup>4</sup> the Russian Government made answer to the proposition which had come from the Danish-Norwegian and from the Swedish Governments. It stated that the Empress would be glad to aid in the protection of commerce and navigation. The Empress would in the coming spring send out three or four ships of the line and frigates from Archangel on a cruise along Russia's northern coast as far as Cape North to protect commerce and navigation, and she proposed as well that the Danish-Norwegian and the Swedish Kings should send a like number of war-ships to cruise along their countries' coasts, so that they might act together and support one another, if needs be, toward any attack upon navigation.

The Empress invited the two other Powers to enter into a "concert," and to act together with regard to the belligerent States. They should direct their Ambassadors in London and in Paris to act together and, in order that the declarations which they were to make should be uniform, to join them in draft form to the note which the Empress considered sending to the Governments of the belligerent countries. It was to call attention to the fact that Russia desired to equip a fleet

<sup>1</sup>Cf. Bernstorff's note to the Ambassador in Stockholm, of August 25, quoted above.

<sup>2</sup>Holm in *Dansk Historisk Tidsskrift*, loc. cit., p. 27.

<sup>3</sup>See *Recueil des instructions données aux ambassadeurs de France*, XIII. Danemarc, p. 209; Fauchille, *La diplomatie française*, p. 210.

<sup>4</sup>See Zachrisson, loc. cit., annex 17.

for cruising purposes in the Arctic Ocean as far as Cape North, and that she would not brook privateering and interference with trade in those waters.

§ 55, page 178.—Panin's draft of the declaration which according to the order of the Empress was laid before her, was approved on February 27/March 9. Thus came into being the famous declaration which on the following day, February 28/March 10, 1780, was sent to the Courts in London, Versailles and Madrid.

In the declaration<sup>1</sup> it is stated that Russian navigation is frequently interfered with by the operations of the belligerent Powers. The obstacles to commercial freedom in general and of Russia in particular, were calculated to invite attention by the sovereign and all neutral nations. The Empress therefore felt the growing necessity of removing these obstacles by every means consistent with her dignity and the welfare of her subjects.

In order to prevent future misunderstandings and violations, she has found it necessary to set forth the following principles which she would follow and which the belligerent Powers could not violate without injuring the neutrals:

1. Neutral ships should be free to sail from port to port of the belligerent Powers and along their coasts.

2. Goods belonging to subjects of belligerent Powers should, excepting contraband, be free on neutral vessels.

3. With regard to what constitutes contraband, Articles 10 and 11 of Russia's treaty with England (1766) should hold and be applicable to the other belligerent Powers.

4. A port should be regarded as blockaded when guarded by a sufficient number of stationary war-ships near enough to each other so as to offer real danger in entering it.

5. These fundamental principles should serve as guide in deciding whether or not the prizes were lawfully captured.

The Empress declared that she would uphold these principles and protect the honor of her flag and security of the commerce and navigation of her subjects against any one and that she had directed a considerable part of her sea power to be made ready to sail. These measures should nevertheless not affect her strict neutrality which she had conscientiously observed and would continue to observe as long as she might not be required and forced to go beyond moderation and beyond the absolute bounds of impartiality. But in this extreme event, her fleet would be given orders to sail forth wherever honor, service and necessity might demand that this be done.

<sup>1</sup>See Bergbohm, *loc. cit.*, p. 134; Calvo, *Le droit international théorique et pratique*, vol. 4, § 2501; F. de Martens, *Recueil des traités conclus par la Russie*, vol. 9, p. 307.

Finally, she requested the belligerent Powers to prepare instructions for their war-ships in accordance with the aforementioned principles.

The declaration to the belligerent Powers was in the first place forwarded to the Courts at Copenhagen, Stockholm, The Hague and Lisbon with the request to enter into an alliance which should with its full strength protect neutral commerce and navigation and endeavor to secure recognition for the fundamental principles set forth.

§ 58, *page 187*.—When Bernstorff received Empress Catherine's declaration, he was not quite certain whether or not it should be forwarded to the neutral Powers or whether it had been sent already to London, Paris and Madrid. The Russian Ambassador in Copenhagen could give him no information on this point. . . .

When Bernstorff communicated to Schumacher in Petersburg the contents of Sacken's note and his answer, he added the following in a ciphered letter:

It would certainly be a great mistake if the declaration to which I refer in my unciphered letter had already been delivered; but the ardent genius of the Empress makes me believe that it has been done: that Petersburg has felt part of the inconveniences and that for this reason explanations have been made upon this matter in obscure and ambiguous terms. It is an essential part of the plan not to issue the declaration until the neutral Powers have united. The declaration is even absolutely superfluous if the convention is adopted according to the project we have formed for it. It is still to be observed that all our declarations to England and France with which we have treaties must be essentially different from those that it would be proper and just to send to the Powers with which we have no engagements. On this point France does not contest our principles, England but a few, and Spain alone violates and controverts all of them. This entire situation and the sum of all these reasons make us desire that the whole idea should be dropped, at least with regard to us. You can not directly propose this, but you will give a hint to that effect and with all possible caution, in the conversations you are to have upon the subject with Count Panin.

On March 31, Bernstorff sent to St. Petersburg the outline for an armed neutrality between Russia and Denmark-Norway.<sup>1</sup> . . .

<sup>1</sup>Holm, *Historisk Tidsskrift*, pp. 97-104. This states that it was sent March 29. According to the register of the Ministry of Foreign Affairs it is dated March 31.

The convention was signed in Copenhagen on July 9, 1780, by the Danish-Norwegian Government and Sacken, the Russian Ambassador.

§ 59, *page 194*.—The Government at Stockholm was much surprised when it received Empress Catherine's declaration. It was no doubt pleased to see that it was the same proposition which Sweden had sought to adopt with regard to England; but the Government hesitated, because it did not appear how the declaration was to be changed.<sup>1</sup> The Government thought it therefore prudent to secure more detailed information upon certain points.<sup>2</sup> . . .

A convention was signed at St. Petersburg July 21/August 1, between Russia and Sweden.<sup>3</sup> . . .

This treaty was acceded to by Denmark-Norway, and Sweden also acceded to the treaty of July 9 between Russia and Denmark-Norway.

§ 61, *page 199*.—The Dutch Government, upon receiving Empress Catherine's declaration, forwarded at once a friendly answer, and, standing as it did on a strained footing with England, would gladly have joined the other neutral States. Tedious negotiations took place in the meantime between the Russian and Dutch Governments. Only on November 20, 1780, did the States General at last resolve to join the neutrality alliance and the Dutch Ambassador in St. Petersburg was authorized to sign the convention with Russia, which took place on December 24, 1780/January 4, 1781.

§ 62, *page 200*.—The Russian declaration was not sent to the Prussian Government because at the time Prussia had no war fleet. Count Goertz, the Prussian Minister in St. Petersburg, had in the meanwhile been notified privately that it would be agreeable to Prussia to join the alliance. The Prussian King, Frederick the Great, was desirous of protecting the commerce and navigation of his subjects, and forthwith gave to his Ministers in St. Petersburg directions to negotiate a treaty with the Russian Government. He also desired to come into closer relations with Russia in order to counteract a Russian-Austrian alliance.

Even before the negotiations had been completed, the Prussian Government issued, April 30, 1781, a declaration and ordinance about the

<sup>1</sup>See C. T. Odner, *Minne af riksrådet greve Ulrik Scheffer in Svenska akademien's handlingar*, for the year 1886, p. 177.

<sup>2</sup>See Zachrisson, *loc. cit.*, p. 32.

<sup>3</sup>*Ibid.*, pp. 76-80, annex 18.

navigation and commerce of Prussian subjects during the war.<sup>1</sup> This declaration followed exactly the text of the Russian declaration of 1780. The list anent contraband is the same as that stated in the Russian-English treaty of June 20, 1766.<sup>2</sup> It further strengthened the principle "free ship, free goods," which Frederick the Great had set forth in the middle of the century.

Because war had broken out between England and Holland, and Dutch navigation had been ruined, the Dutch therefore sought to carry on their commerce under the neutral flag. The Prussians especially took over a large part of the Dutch transportation.<sup>3</sup>

The Prussian merchant ships which were seized or threatened by the war-ships or privateers of the belligerent States were compelled to get protection from the war-ships of the northern Powers or to proceed under their convoy, as these Powers had united in the defense of the neutral merchant ships against attack by the belligerents.

On May 8/19, 1781, the Prussian-Russian convention was concluded. In well nigh all points it conformed to the convention between Russia and Denmark-Norway.

The Prussian-Russian convention was joined in by Denmark-Norway and by Sweden with separate explanatory declarations in reference to the accession.

Prussia's accession to the neutrality alliance proved fortunate to Prussian merchant ships. Complaints of Prussian ship-owners were speedily settled in London and piracy decreased.<sup>4</sup>

The declaration of the armed neutrality alliance was further acceded to by Austria on October 9, 1781;<sup>5</sup> by Portugal on July 13/24, 1782, and by the kingdom of the Two Sicilies on February 10/21, 1783.

The accession of the last-named Powers to the neutrality alliance was essentially only of moral significance. Besides, they entered into treaties with Russia alone, without any formal acceptance thereof by the other participating States.<sup>6</sup>

<sup>1</sup>*Post*, p. 391.

<sup>2</sup>At the time Prussia had no treaty as to what should be understood by contraband. See O. Eichelmann, in *Russian Review*, 1880, p. 245; R. Kleen, *Om Krigskontraband*, p. 62.

<sup>3</sup>Richard Krauel, *Preussen und die bewaffnete Neutralität v. 1780*, in *Forschungen zur Brandenburgischen und Preussischen Geschichte*, vol. 21, p. 141.

In 1781, only eleven Dutch ships passed the Sound, while an average of 2,000 passed through it in the previous year. In 1780, 671 Prussian ships passed through the Sound, the number of which increased to 1507 in 1781.

<sup>4</sup>*Ibid.*, p. 143.

<sup>5</sup>*Post*, p. 403.

<sup>6</sup>Eichelmann in *Russian Review*, 1880, p. 244.

§ 63.—The declaration of Catherine II had a sorry reception in England. This country would not give up her ancient practice of capturing enemy goods found on neutral ship. The English Government therefore answered the imperial declaration, that England would abide by the provisions of the different treaties and that, with regard to all nations with which she had concluded treaties anent different provisions, she would act in accordance with the fundamental principles of the general law of nations. With special reference to Russia, English war-ships and corsairs, from the beginning of the war, had been enjoined to show the Empress' flag special respect and to observe the provisions of treaties. In case any inconvenience should nevertheless be caused, this would be adjusted before the courts of justice.<sup>1</sup>

In France, on the other hand, the Empress' declaration was received with great joy. The French Government declared in its answer that it accepted in full the viewpoint of the declaration. It gave expression of its satisfaction that Russia and the other neutral Powers were demanding that which France had conceded long since.<sup>2</sup>

The Spanish Government also gave kindly answer to the declaration of the Empress. It held England responsible for the attack which Spanish privateers had committed. The Spaniards had been forced to follow England's example in seizing enemy goods on neutral ships. As soon as England put an end to such acts, Spain would do the same. The suspicion to which the neutral ships had subjected themselves when they sailed to Gibraltar which was blockaded, they could have avoided by conforming to the regulation issued on March 13, 1780.<sup>3</sup>

§ 70, *page 256*.—At the suggestion of Sacken, the English admiralty issued under date of March 21, 1800 the following general order to the fleet and to the commanders of ships:

Whereas upon transmitting to the right hon. lord Grenville one of his Maj. principal secretaries of state, copies of letters, which we had received from the right hon. lord Keith commander in chief of his Majesty's ships and vessels in the Mediterranean representing that the captain of his Danish Majesty's frigate "Hawfrewen" had refused to permit the captain of his Majesty's ship the "Phoenia" to examine the merchant ships under his the said Danish captain's convoy and that in making resistance when the same was attempted by the boats of his Majesty's ship the "Emer-

<sup>1</sup>*Post*, p. 282.

<sup>2</sup>Fauchille, *loc. cit.*, p. 381; *post*, p. 284.

<sup>3</sup>Bergbohm, *loc. cit.*, p. 142.

ald" a man belonging to the said ship had been wounded; lord Grenville hath by his letter of the 3d. instant signified to us his Majesty's pleasure that the commanders of his Majesty's ships of war should be informed that if in the exercise of the right of examining neutral vessels according to the practice and law of nations they should experience resistance by force either on the part of any merchant vessels or of any ship or ships of war acting as convoy to such vessels. such forcible resistance should be considered as an act of hostility, and that both the merchant vessels and the armed ships should be detained and brought into one of his Majesty's ports, either for legal adjudication or to await the result of such demand as his Majesty may think proper to make of satisfaction from the powers, by whom such armed force may have been commissioned. We do in pursuance of his Majesty's pleasure above signified hereby require and direct you on falling in with any ships or vessels of the description above mentioned, to govern yourself accordingly.

(Adm. sec. Orders & Instructions in the English Public Record Office.)

§ 80.—After this general order to the English war-ships with regard to the searching of neutral merchant ships sailing under convoy, a serious conflict could not long be stayed.

On July 25, 1800, a convoy of six Danish and Norwegian ships under the frigate *Freya*, Captain Krabbe, was held up in the channel by an English fleet of six war-ships, of which four were frigates, under Commander Backer.<sup>1</sup> The latter sent word that he wanted to search the convoy. Captain Krabbe answered that pursuant to his instructions he found it necessary to resist, and that the vessels carried no contraband. He offered to show the ships' papers. Commander Backer's ship approached the *Freya* and renewed his request for a search and fired a shot at one of the vessels of the convoy which was answered in kind from the *Freya*. The English commander repeated his request for a search of the convoy which Captain Krabbe said he would resist. When the English commander nevertheless sent out a boat to search one of the vessels of the convoy, Captain Krabbe gave orders to fire at the boat. Commander Backer then fired a broadside at the *Freya*, which replied in kind, and the unequal battle continued for one hour. But as the *Freya* was alone against six, she had finally to strike her colors, and together with the convoy was taken to the English port of Dawnes. The *Freya* had two dead and five wounded on board, and the frigate was severely damaged in the battle.

<sup>1</sup>See report on this matter in Eggers, *Actenstücke*, p. 39.

§ 81, page 264.—When the Danish-Norwegian Government was informed of the seizure of the *Freya*, it approached the Russian Government through its then Ambassador in Petersburg, Niels Rosenkrantz.<sup>1</sup> The Ambassador explained that his Government intended, with respect to England, to controvert the latter's claims to search merchant ships under convoy and intimated the desirability that Russia restore the neutrality alliance of 1780, "the system which Russia had always regarded as her peculiar task and which had generally accrued to her honor."

As Emperor Paul had at this time broken off relations with his former allies, England and Austria, and recalled his Ambassadors from London and Vienna, he now approached Prussia and France. Special circumstances had contributed to this course.

According to an agreement in 1798 between England and Russia, Malta, which was in the possession of France, was to be returned to the Order of St. John, as soon as it was pregnable. The island was now occupied by English troops which meanwhile refused to surrender it to the Knights of Malta. As Emperor Paul was the Grand Master of the Order, he felt very much offended by this refusal. He felt bitter also because Englishmen had refused to exchange his French prisoners as against the Russian soldiers who were prisoners of war in France.

Napoleon Bonaparte (at this time First Consul) had received with glee the information about Emperor Paul's rising wrath against England, and he now proceeded to profit by the fact. He liberated all Russian prisoners of war in France (about eight to ten thousand men) and sent them home well clothed and equipped. A lively exchange of letters now took place between Napoleon Bonaparte and Emperor Paul.<sup>2</sup> It was Bonaparte's idea at the time to enter into an alliance with Russia in order to break England's power, and he recalled to Emperor Paul the armed neutrality alliance which Catherine II had established and the principles which the neutral States had asserted at the time.

When Emperor Paul received information from the Danish-Norwegian Government in regard to the capture of the convoy *Freya* by Englishmen, and was at the same time requested to take the lead for the union of the neutral States he availed himself at once of the opportunity which presented itself to oppose England and if possible to break her power. He had a declaration, dated August 15/27, sent

<sup>1</sup>See Holm, *Danmark Norges udenrigske historie, 1791-1807*, vol. 1, pp. 326-327.

<sup>2</sup>See Schiern, *Historiske studier*, p. 202.



to the Courts of Copenhagen, Stockholm and Berlin, by which he made a demand for the upholding of the principles which had been established by the neutrality alliance of 1780, in order to protect neutral navigation and to parry such violent acts as the Danish convoy had been exposed to. The common interests must thus at present bring the neutral States to act together with regard to England.<sup>1</sup>

§ 82.—The Swedish King, Gustavus Adolphus IV, was greatly embittered by England's seizure of Swedish convoys, and generally by her tyrannical acts on the seas. When he was informed of the capture of the Danish-Norwegian convoy *Freya*, he addressed a letter, dated August 20, 1800, to the Russian Emperor Paul, who he knew was wroth against Englishmen, and he proposed, that as at a former time, the neutral Powers should unite in defense of their commerce and navigation.

Emperor Paul had already forwarded to the Swedish, the Danish-Norwegian and the Prussian Ministers in St. Petersburg the aforementioned note of August 15/27.

When this note reached Stockholm, the Swedish Government replied at once favorably.

The Danish-Norwegian Government was also glad to know that Russia was willing to come forth in the defense of neutral navigation, and to reassert the principles of the armed neutrality of 1780. This was exactly what the Danish-Norwegian Government had intended that Russia should do. Meanwhile it had been obliged recently to conclude with England the agreement of August 29 and could not enter into the common struggle.

The Russian proposition contained among other things the provision that the declaration of the commander of a convoy should be sufficient to forego search. This provision, which both Denmark-Norway and the other neutral Powers had asserted with regard to England, the Danish-Norwegian Government had not definitely surrendered. In the agreement of August 29, it had not acceded to England's insistence upon the right to search merchant ships under convoy, but merely pledged itself not to send out convoys until the disputed question had been finally settled through an arrangement. The Danish-Norwegian Government thought therefore that it was free to join the neutrality convention, if it merely desisted from sending out convoys.

As it could be useful in supporting the other neutral States in the

<sup>1</sup>Thyrén, *Verldsfreden under Napoleon*, in *Acta. univ. Lund.*, vol. 23, p. 6.

transactions which were soon to be taken up with England in regard to the right of search, the Government thought best to assent to the Russian proposition.

It would not be well to risk getting into strained relations with Emperor Paul who had expressed his displeasure because Denmark-Norway had weakly met England's demands and concluded with her the agreement of August 29.

Full authority was therefore sent to Rosenkrantz in Petersburg to sign the proposed convention. Prussia also forwarded a favorable answer.

Conventions of the same tenor were signed in Petersburg on December 4/16, 1800 between Russia and Denmark-Norway and between Russia and Sweden.

On December 18 of the same year a convention was concluded between Prussia and Russia.<sup>1</sup>

§ 84, page 273.—When in November the Danish-Norwegian Government had received the Russian plan for the neutrality convention and had given Rosenkrantz full power to accede to it, it did not then have knowledge of the hostile relations which had arisen between England and Russia.

Bernstorff was very anxious that the English Government should not believe that Denmark-Norway had taken the initiative in the formation of the alliance, but that it had come from Russia, and that the alliance was of a purely defensive character. Bernstorff therefore gave detailed instructions to Wedel-Jarlsberg, the Danish-Norwegian Ambassador in London, as to how he should act toward the English Government. On December 20, 1800, Bernstorff wrote to Wedel-Jarlsberg as follows:

The whole of Europe knows at present with what zeal the Emperor of Russia has been endeavoring to reestablish the system of armed maritime neutrality; we do not conceal the part we are taking in these important negotiations, but we are very desirous not to have our views in this matter misunderstood.

At the time of the capture of the royal frigate *Freya* and of its convoy, the British Government believed or pretended to believe

<sup>1</sup>*Post*, pp. 531, 537, 544.

In a treaty concluded on July 11, 1799, with the United States of America, Prussia had, in its Article 12, abolished the principle "free ship, free goods," which had been agreed to in the treaty of 1785, without replacing it with some other provision. Martens, *Recueil*, 2d ed., vol. 6, p. 669.

By the treaty of neutrality of 1800 Prussia approves the said principle.

in the existence of a maritime confederation intended to put a limit to its power. But whether or not its worries in this regard were real, it must have become convinced long since that this union of the neutral maritime Powers was brought about merely in consequence of this act of violence by which it pretended to stifle from its inception the supposed or feared coalition.

It is the Emperor of Russia who conceived the project formally to reestablish the armed maritime neutrality, and he it was who first submitted the proposition to the northern Courts. We were the less inclined to hesitate in accepting that proposition, because, far from ever having renounced the system of this maritime neutrality which it is now the intention to reestablish in its original form, we have constantly complained because in the present war Russia thought it her duty to suspend the principles of that neutrality in the interest of Great Britain. We have never ceased to demand principles and, abandoned by Russia, we have even contracted with Sweden public and formal engagements, for the purpose of maintaining and defending them.

We are therefore not in position to adopt a new system, but it would be a great satisfaction to us to know that Russia would return to that system which we have never abandoned. We bring to this system only viewpoints enabling us to protect ourselves against suspicion or blame on the part of the belligerent Powers. These views are absolutely of a defensive nature and are restricted to the maintenance of the rights whose inviolability evidently needs to be guaranteed through the scrupulous observance of the duties of neutrality. We are very far from desiring to embarrass the belligerent Powers in the exercise of those legitimate rights to which war entitles them, but we believe that we are neither offending nor interfering with them by adopting together with our allies, measures intended to guarantee our flag from the oppression and the injuries resulting from an abuse of these rights.

The engagements which to that effect we are about to renew with Russia are not of a kind to give offense or provocation to any one. They are to rest on the most strict fulfillment of the obligations of neutrality, and will state the duties of the neutrals alongside of their rights; they will in no way depart from the proper provisions of our treaties with either the one or the other of the Powers at war, and their effect will be directed only against manifest violations which, no doubt, have been committed frequently and with impunity against neutral navigation, but of which the Governments that have authorized or tolerated them, would not confess the intention, by entering a complaint against measures adopted for the purpose of repressing them.<sup>1</sup>

<sup>1</sup>From the archives of the Danish Ministry for Foreign Affairs.

§ 86, *page 280*.—The establishment of the neutrality alliance roused much bitterness in England. The claim that neutral ships should be permitted to carry enemy goods and that Englishmen should place restrictions upon the traditional right of search and of capture, was looked upon as an attack upon England's "old maritime rights" and an attempt to curb her dominion on the seas.

When on February 2, 1801, the English King opened Parliament, he referred to the neutrality alliance which purposed "establishing by force a new code of maritime law, inconsistent with the rights, and hostile to the interests of this country." The King had therefore "taken the earliest measures to repel the aggressions of this hostile confederacy, and to support those principles which are essential to the maintenance of our naval strength."

It was repeatedly declared in Parliament that England could not assent to the claim of the northern Powers and that she could not recognize the principle "free ship, free goods," nor any of the other principles set forth by them. . . .

Meanwhile the seizure of the Danish-Norwegian and Swedish vessels was kept up in Great Britain and in her colonies, and many complaints were entered against the reckless expeditions of privateers. English war-ships and corsairs in indiscriminate and inconsiderate fashion entered even into Norwegian ports and coast islands and searched for them.

§ 87, *page 285*.—Preparations were made for the defense of Copenhagen against attacks from the sea, and ten ships of the line were equipped.

The Swedish Government thought it safe to prepare for war and had eleven ships of the line equipped in Karlskrona. In the Russian ports also similar preparations were pushed with all strength. Russia had about twenty good fighting ships in the Baltic, of which twelve were gathered at Reval.

§ 88.—In February, 1801, England found herself in a difficult position. She was at war with France and in more or less strained relations with Russia, Sweden, Prussia and Denmark-Norway. Napoleon Bonaparte demanded that Naples and Portugal close their ports to Englishmen and they hardly dared to omit complying with the demand. If now the Scandinavian States, Russia and Prussia, should also take sides with France, England's commerce and navigation would be ruined and her dominion of the seas seriously threatened. In addition to this

there was discontent among the English population and complaints because of the wretched times and famine in every region of the country.

The English Government found it necessary, as soon as possible, to break the neutrality alliance.

The English Government realized that in case the Russian fleet should unite with the Swedish and the Danish, such power would be a dangerous enemy for the English fleet and make English dominion on the seas insecure. The Government had therefore resolved, in the course of the winter to gather a strong fleet at Yarmouth which should sail for the Baltic and by threats persuade the Scandinavian countries to abandon the neutrality alliance, and in case of refusal to do so, to use force against them before they could bring their fleet together, and thereafter to destroy the Russian fleet.

First and foremost was the question of preventing Denmark-Norway, which was the most considerable as a war and commercial Power, from staying in the neutrality alliance. The English Government believed that a show of force before Copenhagen and threat of war would bring Denmark-Norway to terms.

§ 89, page 291.—The English Chargé d'Affaires in Copenhagen, Drummond, had, but in vain, sought to induce Denmark-Norway to renounce the neutrality alliance, and proposed a defensive alliance with England. . . .

As the English fleet approached Copenhagen, the Government realized that force was now to be resorted to. On March 29, an embargo was placed upon all British merchantmen within the Danish and Norwegian ports. On the same day, Danish troops under Prince Karl of Hessen occupied Hamburg to destroy English commerce with that town. A few days later, Lübeck also was occupied by Danish troops.<sup>1</sup> This occurred after consultation with Prussia, which caused Hannover, Oldenburg and Bremen to be occupied.

On March 30, the English fleet passed Kronberg. . . . After the commander in chief had spied out the defenses, Lord Nelson, with ten ships of the line and numbers of small craft, ordered the destruction of the Danish war-ships. Before this had been accomplished, the English fleet could not proceed toward its real object: the destruction of the Russian fleet at Reval. It could not sail forth so long as it had a

<sup>1</sup>Schiern, *Historiske studier*, vol. 1, p. 206.

hostile force in the rear. On April 2, Maundy Thursday, Lord Nelson attacked in the well-known battle of the Copenhagen roadway.

The English fleet had not looked for such a powerful and vigorous reply from the Danish-Norwegian fleet and from the coast defenses about Copenhagen.<sup>1</sup> It is well known that Parker, the English commander in chief, had thought of discontinuing the battle and had given orders to that effect to Lord Nelson. The latter had no desire to withdraw. He sent a parliamentarian to the Danish-Norwegian Prince to say that firing must cease; if not, he would feel compelled to blow up all the block-ships with all on board.<sup>2</sup> A preliminary truce was concluded, by which Nelson profited by repairing those of his vessels which were in danger of being ruined. Negotiations were initiated between Nelson and the Crown Prince when Nelson proposed an alliance with England. When the Crown Prince declined, the Englishman demanded that Denmark should disarm and break her treaty with Russia. This also was refused on the part of Denmark. After long deliberations an agreement for a truce was reached on April 9,<sup>3</sup> according to which hostilities were to cease (Article 1); the Danish war-ships were to remain in their then condition and equipment, and the armed neutrality alliance, in so far as active participation therein on Denmark's side was concerned, should be suspended as long as the truce was to continue (Article 2). The English fleet was to procure from Copenhagen and the Danish coast whatever it might be in need of for the occupation (Article 4). All the Danish prisoners of war were to be released (Article 5). The truce was to last fourteen weeks (Article 7). . . .

On May 18, the Russian Government lifted the embargo on English ships, and similar action on the part of Sweden was taken on the following day. . . .

Hostilities between England on the one hand and Russia, Sweden and Denmark-Norway on the other were thus brought to an end.

Prussia also came soon into friendly relations with England and

<sup>1</sup>See C. F. Allen, *Slaget paa Kjobenhavns red* in *Dansk folkekalender*, 1842, p. 41; Frederik Schiern, *Om den bevaebnede neutralitet* in *Historiske studier*, vol. 1, p. 192; Zahrtmann in *Nyt archiv for sovaesenet*, vol. 1, p. 168; Naval Chronicle for 1801; Southey, *Life of Nelson*, ch. 7; Jacob Aall, *Erindringer*, ch. 2; K. L. Seidelin, *Krig for havnes frihet*, Copenhagen, 1801.

<sup>2</sup>See William Massey, *History of England*, vol. 4 (1865), pp. 351-352; Holm, *Denmark-Norges udenrigske historie*, vol. 1, pp. 398 et seq.

<sup>3</sup>Martens, *Recueil*, 2d ed., vol. 7, p. 238.

again opened navigation on the Weser, as it was also opened on the Elbe pursuant to a convention between Prussia, Denmark-Norway and England.

§ 90, page 295.—The English Government sent Lord Helens to St. Petersburg at the request of the Russian Government in order to negotiate with the latter. On June 5/17 a convention was signed by him and the Russian Minister, Panin, reestablishing good relations between Russia and England.<sup>1</sup>

§ 91, page 298.—The result of this last armed neutrality alliance was that the ancient rule of the *Consolato del Mare*, that enemy goods could be captured on neutral ships, was secured by the convention of 1801. The allied Powers had thus not succeeded in having accepted the most important of the principles which they had asserted with regard to England, to the effect that enemy goods (excepting contraband) could be carried free on neutral ships.

This settlement was a peculiar one, as in England it met with strong resistance, because looked upon as an obstacle to maintaining England's supremacy on the seas.<sup>2</sup>

The only concession which England had made to the neutrals on this point was that she would not regard as enemy goods such articles as were produced in the enemy country by cultivation or industrial labor when such articles remained neutral property.

Furthermore, England had won her point: that merchant ships under convoy should submit to search by English war-ships. This had been the main reason for the formation of the last neutrality alliance. The fact that England acknowledged that corsairs should not be entitled to search convoys was of minor importance. English corsairs had generally not ventured to demand that they be permitted to search merchant ships convoyed by war-ships.

On the other hand, England had admitted the clause of the armed neutrality alliance that neutral ships should be free to sail to the ports

<sup>1</sup>*Post*, p. 595.

<sup>2</sup>On November 13, 1801, Lord Nelson speaking in the Upper House of the convention with Russia of June 5, 1801, said:

"It had put an end to the principle endeavored to be enforced by the armed neutrality in 1780 and by the late combination of the northern Powers, that free ships made free goods,—a proposition so monstrous in itself, so contrary to the law of nations, and so injurious to the maritime rights of this country, that, if it had been persisted in, we ought not to have concluded the war with those Powers while a single man, a single shilling, or even a single drop of blood remained in the country." (Debate in the House of Lords, Nov. 13, 1801. Parliamentary History, vol. 36, p. 262.)

of belligerent States and along the coasts thereof.<sup>1</sup> Likewise, England by the convention of 1801 had agreed that war contraband should be defined even as had been done in the neutrality convention; namely, it should include arms and other necessities of war; it should, however, not include timber, nor "naval munitions," nor necessities of life.

Regarding the question of blockade, England had admitted that it must be effective. There was yet a difference in expression between the rule set up by the neutrals and that figuring in the convention of 1801. While in their convention the neutral Powers considered the port as blockaded, where the blockading forces consisted of "stationary *and* sufficiently nearby vessels," the expression in the convention of 1801 was changed, *and* being replaced by *or*.

England was therefore entitled to maintain a blockade by means of cruisers and vessels which were not stationed before the blockaded port, but moved to and fro between the various points. On the other hand, the so-called "paper blockade" was to be abolished.

**CALVO:** *Le Droit International Théorique et Pratique, précédé d'un exposé historique des progrès de la science du droit des gens.* Fifth edition. Paris, 1896.

Carlos Calvo. Argentinian publicist and diplomat; born in 1824; died in 1906; member of the Institute of International Law. Mr. Calvo entered, at an early date, the consular service of his country and later was Argentinian minister at Berlin and Paris. He therefore was familiar with the theory and practice of international law. His most important works are:

1. *El derecho internacional teórico y práctico de Europa y América*, Paris, 1868, 2 volumes. It was also published in French under the above title and expanded by the learned author into a comprehensive treatise on international law, the fifth edition of which appeared in 1896 in six volumes.

2. *Dictionnaire de droit international*, 1885, 2 volumes. This work covers the field of international law, public and private, in the form of brief articles, arranged alphabetically under appropriate headings, and is especially valuable for the biographical notices of the various publicists who have treated international law.

<sup>1</sup>The clause in the armed neutrality alliance about the freedom of the neutral Powers to sail "from port to port and along the coasts of the nations at war" was nevertheless emasculated in the treaty of 1801 to "freely to the ports and upon the coasts of the nations at war."



Mr. Calvo is regarded as the leading Spanish writer on international law, and as a Latin-American by origin his various treatises have a peculiar value as a statement of the Latin-American theory and practice as well as the system of international law as understood and applied in Europe.

*Volume 4, page 414, § 2498.*—The rule established by the *Consolato del Mare* was not merely shaken at this time by the criticisms of publicists and by the contrary doctrine of the courts; it was also censured by most of the conventional engagements concluded between France and various nations, to such an extent that during the period between 1654 and 1780 it is found in only fifteen treaties, while thirty-six sanctioned the new principle *free ship, free merchandise, and enemy ship, enemy merchandise*.<sup>1</sup>

§ 2499.—The unshakable constancy of the English policy during this period deserves attention from more than one point of view.

On the basis of the maxims proclaimed by *Consolato del Mare*, England permitted the perpetration of the most odious attacks against the property of the neutrals, including among the articles of war contraband almost all articles of licit commerce and went as far as to confiscate articles of food and of clothing. She pretended in 1756 that by *adoption*, the Dutch vessels had been converted into French vessels, that is to say, into enemy vessels, and she condemned them to confiscation in order to prevent the French colonies from continuing their traffic with neutrals, thus hoping to monopolize the commerce of colonial produce. We know that the excesses of this aggressive and covetous policy brought about in 1780 the belated, yet generous attempt known under the name of first armed neutrality.<sup>2</sup>

§ 2500.—The most characteristic trait of the historic period which

<sup>1</sup>See especially the treaties concluded by France with Spain, November 7, 1659 [Dumont, vol. 6, pt. 2, p. 264; Savioe, vol. 2, p. 1; Léonard, vol. 4], with Denmark, February 14, 1663 [Dumont, *ibid.*, p. 436; Léonard, vol. 5], with Portugal, March 31, 1667 [Dumont, vol. 7, pt. 1, p. 17; Castro, vol. 1, p. 338; Léonard, vol. 4], with Sweden, April 14, 1672 [Dumont, *ibid.*, p. 166; Léonard, vol. 5], with Great Britain and Holland, April 11, 1713 [Dumont, vol. 8, pt. 1, pp. 345, 377].

<sup>2</sup>Gessner, pp. 30 *et seq.*; Flassan, *Histoire*, vol. 1, ch. 3, p. 194; Valin, *Commerciale*, bk. 3, title 9; Wheaton, *Histoire*, vol. 1, p. 62; Wheaton, *Eléments*, pt. 4, ch. 3, § 23; *Life of Sir L. Jenkins*, vol. 2, p. 720; Heffter, § 152; Marshall on *Insurance*, vol. 1, p. 425; Ortolan, vol. 2, p. 100; Vergé, *Précis de Martens*, vol. 2, p. 348; Gessner, pp. 36 *et seq.*; Wheaton, *Eléments*, vol. 2, pp. 149 *et seq.*; Heffter, § 158; Madison, *Examination*, pp. 51 *et seq.*; Ortolan, vol. 2, pp. 109 *et seq.*; Reddie, *Researches*, vol. 1, pp. 92 *et seq.*; Bergbohm, *Die bewaffnete Neutralität*, 1780-1783.

ends with the last half of the eighteenth century is the incertitude as to the real limitations to the rights of neutrals, the logical and necessary consequence of the lack of uniformity in jurisprudence, of the absence of understanding between the secondary maritime Powers of the European Continent in order to protect themselves against the oppressions weighing on them, and of England's persistent efforts to ensure her maritime supremacy.

§ 2501.—The secret tendencies and the righteous resentment of the principal Courts of Europe were at last brought to the bursting point when England seized in the Mediterranean two Russian vessels loaded with wheat which were supposed to be intended for Gibraltar.

Panin, the Chancellor of the Russian Empire, made himself the mouthpiece of the general indignation and persuaded Empress Catherine II to make it publicly and solemnly known that she would not longer put up with the obstacles placed in the way of free neutral commerce. As a result, the Russian Government published on February 28, 1780,<sup>1</sup> the famous declaration containing the following five bases:

1. Neutral vessels are permitted to sail from port to port and along the coasts belonging to the belligerent States, without being detained.

2. Enemy merchandise is free under neutral flag, excepting war contraband.

3. To determine that which is to be regarded as war contraband, Russia holds to Articles 10 and 11 of her treaty with England, dated June 20, 1766,<sup>2</sup> to which it grants obligatory force with regard to all belligerents.

4. No port shall be regarded as blockaded unless there be real and effective danger in entering it, that is to say, it must be surrounded by the enemy.

5. These principles shall serve as a rule in the procedures and decisions of maritime prize courts.

The same Government furthermore forbids the commission of hostile acts in the Baltic Sea, to which Sea it attributed the character of a closed or internal sea, *mare clausum*.

This declaration had hardly been formulated when Denmark, July 9, 1780,<sup>3</sup> Sweden, August 1, 1780,<sup>4</sup> Holland, January 4, 1781,<sup>5</sup> Prus-

<sup>1</sup>*Post*, p. 273.

<sup>2</sup>For these two articles see *post*, pp. 342, 343.

<sup>3</sup>*Post*, p. 299.

<sup>4</sup>*Post*, p. 311.

<sup>5</sup>*Post*, p. 346.

sia, May 8, 1781,<sup>1</sup> Austria, October 9, 1781,<sup>2</sup> Portugal, July 13, 1782,<sup>3</sup> the Two Sicilies, February 10, 1783,<sup>4</sup> France and Spain, as well as the United States which was at this time at war with Great Britain, gave their adhesion to it; all of these Powers obligated themselves to maintain and to respect the new principles though, to uphold them, they should be forced to the recourse of arms.

One understands that principles such as Europe, stimulated by the initiative of Russia, sought to cause to prevail in practice and which in evident fashion mark a new era in modern maritime law, could not receive the approval of England. The St. James' Ministry refused therefore to join the league of the neutrals declaring that it would continue to hold to the stipulations, following therein a precise and reasonable course, contained in England's treaties of commerce and of navigation. But once started, the movement was not to stop in the face of this selfish resistance, and England was soon compelled to abandon the violent road within which it pretended to persist in disregard of the sacred rights of neutrality; she permitted the importation under any flag of merchandise coming from the East and from the Antilles, and directed her privateers to be more moderate in their conduct.<sup>5</sup>

§ 2502.—After the conclusion of the Versailles peace of 1783,<sup>6</sup> which closed the War of Independence of the United States, England, France and Spain again put into force the stipulations of the Utrecht treaties<sup>7</sup> with regard to commerce and navigation of the neutrals. Three years later, the treaty signed on September 26, 1786,<sup>8</sup> between France and Great Britain sanctioned the general principles of armed neutrality in such a formal manner that the English Government became the object in Parliament of vehement attacks for having accepted and recognized them.<sup>9</sup>

<sup>1</sup>May 19, 1781, new style. *Post*, p. 397.

<sup>2</sup>*Post*, p. 403.

<sup>3</sup>July 24, 1782, new style. *Post*, p. 420.

<sup>4</sup>February 21, 1783, new style. *Post*, p. 433.

<sup>5</sup>Gessner, pp. 39 *et seq.*; Wheaton, *Histoire*, vol. 1, p. 221; Goertz, *Mémoires*; Galiani, *Dei doveri*; Lampredi, *Commercio*; Wheaton, *Eléments*, pt. 4, ch. 3, § 23; Klüber, *Droit*, §§ 303–305; Ortolan, vol. 2, pp. 137 *et seq.*; Martens, *Précis*, § 325; Vergé, *Précis de Martens*, vol. 2, p. 351; Bergbohm, *Die bewaffnete Neutralität*, pp. 210 *et seq.*

<sup>6</sup>De Clercq, vol. 1, p. 142; Calvo, vol. 4, p. 296; Cantillo, p. 586; Martens, 1st ed., vol. 2, pp. 462, 484; 2d ed., vol. 3, pp. 519, 541; *State papers*, vol. 1, p. 424.

<sup>7</sup>De Clercq, vol. 1, p. 10; Dumont, vol. 8, pt. 1, pp. 345, 351.

<sup>8</sup>De Clercq, vol. 1, p. 146; Martens, 1st ed., vol. 2, p. 680; 2d ed., vol. 4, p. 155; *State papers*, vol. 3, p. 342.

<sup>9</sup>Gessner, pp. 43, 44; Wheaton, *Eléments*, pt. 4, ch. 3, § 23; Wheaton, *Histoire*, vol. 1, p. 230; Ortolan, vol. 2, pp. 142, 143; Vergé, *Précis de Martens*, vol. 2, p. 354; *Parliamentary History of England*, vol. 36, p. 563.

§ 2503.—The abnormal conditions of the war in the train of the French Revolution unhappily brought about a return to all the violence and abuse to which universal reprobation seemed to have forever put an end. Thus, the allied Governments, in disregard of the imprescriptible rights of the neutrals, arbitrarily extending the list of so-called articles of war contraband, opposed importation into France of food and merchandise of foreign origin. On the other hand, the National Convention, in a sense of legitimate defense, promulgated May 9, 1793, a decree inhibiting neutral vessels, under the penalty of confiscation, from furnishing grains and food to the enemy, and edicted the abrogation of the principle that the flag protects merchandise. The British Government, secretly availing itself of this pretext to return to its traditional doctrines of 1756, published on June 8, 1793,<sup>1</sup> an ordinance directing its privateers and war-ships to capture any vessel attempting to force the blockade of the French coasts, excepting therefrom Swedish and Danish vessels, which were only to be seized in case they failed to observe the notification of the blockade stated in their ship's papers.<sup>2</sup>

§ 2504.—England's allies endeavored in vain to justify these measures as being of only an exceptional and transitory nature; Russia refused to abide by them, separated herself from England, from Austria, and resolutely laid down the bases of maritime neutrality which the States bathed by the Baltic Sea proclaimed in 1800.<sup>3</sup> These bases may be summarized as follows:

1. A neutral vessel shall not be considered as violating the blockade and shall not be subject to capture unless, after having been warned by the war-ship or the privateer of the State which enforces the blockade, it attempts to run the blockade by force or by ruse.

2. Merchant vessels sailing in convoy under the escort of a war-ship are exempt from search, and the statement of the convoying officer suffices to prove that they are not carrying war contraband.

Even before this new coalition had had time to gain strength and come to an understanding, England declared war against Denmark for having joined the alliance and proceeded to bombard Copenhagen;

<sup>1</sup>Martens, 1st ed., vol. 5, p. 264; 2d ed., vol. 5, p. 596.

<sup>2</sup>Ortolan, vol. 2, pp. 144 *et seq.*; Gessner, pp. 44, 45; Wheaton, *Eléments*, pt. 4, ch. 3, § 23.

<sup>3</sup>See the conventions of Russia with Denmark of December 16, 1800 (*post*, p. 537), with Sweden of the same date (*post*, p. 531), with Prussia of December 18, 1800 (*post*, p. 544).

the subsequent tragic death of Emperor Paul I of Russia on March 23, 1801, finished the dissolution of an alliance from which the secondary States had had right to expect great advantages for the security of their commerce.

§ 2505.—Profiting by the successes of her marine against Denmark, England resumed the negotiations which she had conducted with Russia for some years, thus expecting the St. Petersburg Ministry not only to dissolve the armed neutrality, but also to adhere to the doctrines proposed by the British Admiralty. In these hopes she was particularly disappointed: as the price for some commercial advantages, she was forced into consenting that the maritime convention of June 17, 1801,<sup>1</sup> should by its Article 3 sanction the following principles:

1. Neutral vessels may freely sail to the ports and along the coasts of the belligerent nations.

2. Merchandise on board shall be free, excepting the so-called *war contraband* and *enemy property*, merchandise of enemy origin, but purchased and carried by the neutral preserving at all events the advantages accrued to the flag of the latter.

3. In order to remove all doubt as to the nature of the objects which constitute war contraband, the contracting Parties refer to Article 11 of the treaty of commerce concluded between themselves on February 21, 1797.<sup>2</sup>

4. A port shall be regarded as blockaded only in case entrance thereto offers a real danger by reason of the number of war-ships charged with inhibiting access thereto.

5. Judicial action against neutral vessels captured because of established suspicions or of evidently culpable facts shall be had without delay, and the mode of procedure shall be uniform and strictly legal.

The dispositions which follow shall be rigorously imposed upon all the States wishing to adhere to the treaty. The so delicate question of the visit of convoyed ships was resolved in these terms by Article 4:

1. The right of searching merchant vessels owned by the subjects of one of the two Powers and sailing under the escort of a war-ship of their nation belongs exclusively to vessels of like rank of the belligerent State, and may not be exercised by private ship-owners nor by corsairs.

<sup>1</sup>*Post*, p. 595.

<sup>2</sup>*Post*, p. 445.

2. The owners of vessels destined to sail in convoy under the escort of a war-ship shall, before receiving their nautical instructions, present to the chief of the convoy their passports and their sea certificates, in the form established by the treaty.

3. When a convoy is made by a war-ship of the belligerent Parties, the latter, unless the weather conditions upon the sea or the vicinity in which the encounter takes place prevent it from doing so, shall hold itself beyond cannon range and send a longboat to the conveying vessel in order to proceed in common accord to the examination of the papers and certificates declaring that the one is authorized to escort such or such ships with such or such cargo from port A to port B, and that the other really belongs to the royal or imperial marine of the nation whose flag she flies.

4. After the regularity of the papers has been recognized, any legitimate suspicion shall be regarded as having been removed. In the contrary case, the chief of the convoy, after having been invited thereto in due form by the belligerent, shall stop long enough to permit the belligerent war-ship to proceed with the search of the vessels composing the convoy.

5. If after the examination of the papers, the captain of the war-ship believes that he has good reason to detain one or several of the convoyed vessels, he shall be free to do so by preliminarily placing the captain of the crew at the disposal of the chief of the escort, who in turn shall be entitled to place on board the sequestered vessels any one of his officers to follow the procedure of the investigation which it will be necessary to perform. The captured vessel shall then be conducted forthwith to the nearest and most convenient port of the belligerent nation in order to subject it to a regular examination.

A last article, the fifth, forbids the chief of the convoy to resist by force the execution of the acts prescribed by the commander of the belligerent vessel.

Various accessory stipulations of this treaty sanction new guaranties in the interests of the neutrals; one of these in particular states that in case of an ill-founded detention or of the violation of the established laws, a proper indemnity shall be due the owners of the vessel and of the cargo in proportion to the losses they shall have sustained.

In order to forestall the abusive use of third flags, Article 7 establishes that, in order that a vessel may be regarded as legitimately belonging to the nation whose colors she flies, the captain and half of the crew must be subjects of the same nation.

Finally, Article 8 declares applicable to all maritime rules undertaken by the contracting Parties, the principles of this treaty adhered to by Denmark on October 23, 1801,<sup>1</sup> and by Sweden on March 30, 1802.<sup>2</sup>

§ 2506.—As also seen from this analysis, it was the purpose of the Anglo-Russian treaty to consolidate through general formulas, the rules established by the two armed neutralities of 1780 and of 1800 with the traditional principles of the maritime law of Great Britain. Looked at from this point of view, it must be acknowledged that this arrangement was only a compromise between two opposite elements; it had, however, for its final result the partial abandonment of the violent policy of the London Ministry. The nations of the North did indeed consent to weaken in fact the rigor of the doctrine that the free vessel protects the cargo it bears, and to submit to the right of search which they had hitherto opposed; but they obtained at the same time recognition for the principles of armed neutrality with regard to effective blockades and to the commerce with the colonies and along the coasts of the enemy.

To feel convinced that this was the real meaning of the St. Petersburg treaty, it will suffice to refer to the discussions which took place in the House of Lords, at the sitting of November 12, 1801. Lord Grenville spoke first and declared that what had been stipulated was in manifest contradiction with the previous attitude of the ministers of His Britannic Majesty, and that the exaggerated pretensions of the Baltic Powers had been singularly favored by the weak and vacillating policy of England during the last years of the war waged against the United States. According to the same orator, the Government had assumed a yielding attitude whose tendency could not be controlled, and gradually it had followed a course it had not dared acknowledge one year before, while on their part the other Powers had little by little yielded the pretensions which they had maintained relative to this question and exposed themselves, by following in the footsteps of the Russian Government, to yield through first one and then another concession to the reestablishment of the ancient maritime law and to the nullification of conquests so laboriously realized by the neutrals during the previous twenty-five years.

<sup>1</sup>*Post*, p. 606.

<sup>2</sup>See footnote, *ibid*.

§ 2507.—The final result was that the treaty of June 17, 1801,<sup>1</sup> proved unsatisfactory to all of the contracting Parties: to England because it interfered with her policy; to the neutrals because it restricted their rights; and for this reason also Russia denounced the treaty in the course of the year 1807 by proclaiming again the principles which formed the basis of the armed neutrality of 1800 and by pledging herself to abide by it faithfully in the future. Thus freed from its conventional engagements, the English Government reestablished its ancient doctrines not only against Russia, but even against all the other neutral Powers.

One fact worthy of our notice is that not a peace treaty or a commercial treaty concluded since by England, either with Sweden, or with Denmark, contains the slightest stipulation concerning the principles of maritime law in the interest of the neutrals who had for such a long time roused the attention of Europe.<sup>2</sup>

Page 518, § 2638.—The neutral State shall not merely observe neutrality, but even have its situation respected by third parties and to that effect take all necessary measures. If need there be, it may equip land and sea forces in order to safeguard its rights against any attack and to prevent the belligerents from entering its territory: This is what is termed *armed neutrality*. Neutrality, when the State which proclaims it is not in position to make it respected by an eventual recourse to armed force, is doubtless a rather precarious guaranty. It is therefore admitted that the neutral who does not feel himself strong enough to defend himself alone is entitled to ally himself with others to perfect an action and help against attacks which the belligerents might direct against their common neutrality. Thus, at the end of the last century and at the beginning of the present one, we have seen the maritime Powers of the north of Europe unite collectively and mutually to protect their rights against the pretensions of England which violated the independence and the immunities of maritime neutrality.<sup>3</sup>

Volume 5, page 182, § 2914.—England nevertheless persisted in her

<sup>1</sup>Post, p. 595.

<sup>2</sup>Ortolan, *Règles*, vol. 2, pp. 153–156; Cauchy, vol. 2, pp. 339 *et seq.*, Gessner, pp. 44–46; Wheaton, *Eléments*, pt. 4, ch. 3, § 23; Klüber, *Droit*, §§ 307 *et seq.*; Martens, *Précis*, §326a; Cussy, *Phases*, vol. 2, pp. 203 *et seq.*; Vergé, *Précis de Martens*, vol. 2, p. 355; Manning, pp. 274 *et seq.*

<sup>3</sup>Fiore, vol. 2, p. 369; Bluntschli, §§ 748, 778; Klüber, *Droit*, § 282; Heffter, §§ 145, 149.



arbitrary policy. In 1756, at the beginning of the Seven Years' War, she declared anew, by a simple proclamation, a blockade of all the French ports, and her vessels captured a large number of ships the most of which belonged to Dutch subjects. However, in consequence of energetic protests on the part of the States General, these ships and their cargoes were finally returned to their Government as an exceptional favor; for the St. James Ministry took care to declare that in future, any vessel attempting to violate a *declared* blockade would be seized and confiscated.

France having aided the English colonies of North America in their struggle against the metropolis, England renewed her blockade of *all* French ports, by proclaiming that all vessels met in destination for the said French ports would be seized as legitimate prizes. In this connection we shall here quote a passage from a decision rendered in 1780 by Judge James Marriott of the British admiralty court against Dutch vessels: "You are confiscated the moment you are captured. Owing to her insular position, Great Britain naturally blockades all the ports of Spain and of France. She is entitled to profit by this position as of a gift granted to her by Providence."<sup>1</sup>

§ 2915.—These exaggerated pretensions called into being a league of the maritime States for the purpose of opposing them. On February 28, 1780,<sup>2</sup> Russia published a declaration by which she expressed her resolution of resorting to armed force to cause the neutrality of their flag to be respected. This act stated that "to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous." As may be seen, this clause makes the existence of a blockade depend on its reality and restricts the effect of the blockade to the ports, without distinguishing between fortified places and mere commercial localities.

On July 8, 1780, Denmark made a similar declaration,<sup>3</sup> which was followed on July 9<sup>4</sup> and on August 1<sup>5</sup> by treaties between Russia, Denmark and Sweden, by which those Powers bound themselves, in case of an illegal capture of their merchant ships by the belligerent Powers,

<sup>1</sup>Flassan, *Histoire*, vol. 6, p. 64; Pistoye et Duverdy, vol. 1, p. 366; Ortolan, *Règles*, vol. 2, pp. 360, 361; Hautefeuille, *Des droits*, vol. 2, p. 250; Gessner, p. 160; Cussy, *Phases*, vol. 2, p. 243; Fiore, vol. 2, p. 459; Klüber, *Droit*, p. 380, note c.

<sup>2</sup>*Post*, p. 273.

<sup>3</sup>*Post*, p. 297.

<sup>4</sup>*Post*, pp. 299, 305.

<sup>5</sup>*Post*, pp. 311, 317.

to act concertedly in order to secure the redress of their grievances and proper reparations, and to resort to reprisals against the nation that should refuse to do them justice. These treaties, to which Holland acceded on January 4, 1781,<sup>1</sup> Prussia on May 8, 1781,<sup>2</sup> the Empire on October 9 of the same year,<sup>3</sup> Portugal on July 13, 1782,<sup>4</sup> and the Two Sicilies on February 10, 1783,<sup>5</sup> have been termed the *armed neutrality*.

The definition of blockade sanctioned by the Russian declaration was reproduced in a treaty (Article 27) which France signed with Russia on January 11, 1787,<sup>6</sup> and in that (Article 18) concluded on the 17th of the same month between Russia and the Two Sicilies.<sup>7</sup>

§ 2916.—When the French Revolution broke out, England ordered the seizure of all neutral vessels *en route* to any French port,—this in reality declared all French coasts in a state of blockade,—on the pretext that international laws could not be applied to this country in the situation in which it then found itself. “France,” said Minister Pitt, “must be detached from the commercial world, and treated as if she had but one single State, one single port, and as if that place had been blockaded and famished by land and by sea.” Article 3 of the instructions which he addressed June 8, 1793,<sup>8</sup> to the commanders of the English war-ships and to the captains of English corsairs ordered that: “In case His Majesty *declares* some port blockaded, commanders of vessels and ship-owners who meet vessels *en route* to such ports, but which had left ports of their respective countries before the declaration of the blockade had reached them, shall be obliged to warn them and to induce them to go elsewhere, but not to molest them, unless they should attempt to enter the blockaded port. Similar action shall be taken with regard to the vessels which have left a port of their country bound for a port *declared* blockaded after such declaration shall have been known in the country whence they have come, and likewise with regard to any vessel which, having learned of the blockade in the course of its voyage, shall have continued its course with the intention of entering therein.”

Of the maritime States, Denmark was at first the only one which

<sup>1</sup>*Post*, p. 346.

<sup>2</sup>May 19, 1781, new style. *Post*, p. 397.

<sup>3</sup>*Post*, p. 403.

<sup>4</sup>July 24, 1782, new style. *Post*, p. 420.

<sup>5</sup>February 21, 1783, new style. *Post*, p. 433.

<sup>6</sup>*De Clercq*, vol. 1, p. 171; Martens, *Recueil*, 1st ed., vol. 3, p. 1; 2d ed., vol. 4, p. 196.

<sup>7</sup>Martens, *Recueil*, 1st ed., vol. 3, p. 36; 2d ed., vol. 4, p. 229.

<sup>8</sup>*Ibid.*, 1st ed., vol. 5, p. 264; 2d ed., vol. 5, p. 596.

rejected the English proposition of ceasing all commerce with France; Sweden soon followed the action of Denmark with which she renewed on March 27, 1794,<sup>1</sup> the conventions of armed neutrality of 1780. The United States, on the contrary, signed with England on November 19, 1794,<sup>2</sup> a treaty by which they agreed that enemy merchandise on their vessels might be confiscable; they insisted however upon the condition of the reality of the blockade. We find this condition clearly expressed in Article 16 of the treaty which they concluded in 1795 with Spain,<sup>3</sup> which states that "neutral merchandise may be freely carried into the ports of the enemy, provided these ports are not besieged, blockaded or really invested."

In 1798 Great Britain extended the fictitious blockade of the coasts of France to all the ports and to the mouths of all the rivers of Belgium.<sup>4</sup>

§ 2917.—The protests of Denmark and of Sweden won over to them Russia and Prussia, and a new act of armed neutrality was signed by these Powers on the 16th and on the 18th of December, 1800.<sup>5</sup>

Elsewhere it has already been stated that the armed neutrality of 1780 had established in principle that no port should be regarded as blockaded unless it were surrounded by war-ships in sufficient number stationed near enough to each other so as to render entrance by neutral vessels dangerous. The neutrality of 1800, confirmed that rule. Under its Article 3 it is stated: "To determine that which characterizes a port in state of blockade, under this name shall be understood only such port whose entrance is evidently dangerous in consequence of measures on the part of the Power which attacks it with vessels intended for such an operation and within sufficient proximity, and only such vessels shall be regarded as violating the present convention as enter into a blockaded port or such other vessels as, having been previously warned of the state of the port by the commander of the blockade, seek to enter therein by force of arms or by trickery."

England sought to destroy the alliance of the neutrals by declaring war against the Powers of the Baltic Sea; but after the attack directed

<sup>1</sup>*Post*, p. 440.

<sup>2</sup>*Post*, p. 443.

<sup>3</sup>Calvo, vol. 4, p. 113; Cantillo, p. 665; Elliot, vol. 1, p. 390; *State Papers*, vol. 8, p. 540; Martens, *Recueil*, 1st ed., vol. 6, p. 561; 2d ed., vol. 6, p. 143.

<sup>4</sup>Pistoye et Duverdy, vol. 1, pp. 366, 367; Ortolan, *Règles*, vol. 2, pp. 331, 361, 362; Manning, pp. 322, 323; Massé, vol. 1, §§ 283, 284; Heffter, § 157; Wheaton, *Éléments*, pt. 4, ch. 3, § 28; Riquelme, bk. 1, pt. 2, ch. 18; Twiss, *War*, § 102; Hautefeuille, *Des droits*, vol. 2, p. 250; Gessner, pp. 160, 161.

<sup>5</sup>*Post*, pp. 531-549.

against Copenhagen on April 2, 1801, an armistice intervened, and on June 17th following<sup>1</sup> England concluded with Russia a treaty by which she seemed to admit the principles defended by the Powers of the north. She recognized in effect that in order that a port might be blockaded it would be necessary that there should be an effective force before such port; but, instead of stipulating that this force must consist of stationary and sufficiently nearby vessels, she substituted the particle *or* in the place of the particle *and*. According to the terms of this treaty, in order to effect a blockade, she was not compelled to maintain stationary vessels; it sufficed that the vessels should be sufficiently near the place she desired to blockade.

Denmark acceded to the Anglo-Russian convention on October 23, 1801,<sup>2</sup> and Sweden on March 30, 1802.<sup>3</sup> This convention was not long observed. Upon the protests of the United States, the English Government does indeed in 1804 issue to her maritime commanders and to the judges of her vice admiralty courts an instruction not to regard the blockade of the French islands of the West Indies as in existence, unless with regard to certain ports which were really invested, and hence not to seize vessels sailing to these ports unless previously warned not to enter therein.

§ 2018.—But in other regions, England continues her system of fictitious blockades. An order of the British Council of May 16, 1806,<sup>4</sup> declares in state of blockade all the ports, coasts, and rivers from the Elbe to Brest.

**VON DOHM:** *Denkwürdigkeiten meiner Zeit; oder, Beiträge zur Geschichte vom letzten Viertel des achtzehnten und vom Anfang des neunzehnten Jahrhunderts 1778 bis 1806.* Hanover, 1814–19.

Christian Konrad Wilhelm von Dohm. German publicist and historical writer; born in 1751; died in 1820. He entered the civil service of Prussia about 1778, became privy councillor in 1783, represented Prussia at Cologne from 1786 to 1796, and was employed in several missions, one of especial interest being the Hildesheim Congress of 1796 to carry out the armed neutrality in North

<sup>1</sup>*Post*, p. 595.

<sup>2</sup>*Post*, p. 606.

<sup>3</sup>See footnote, *ibid*.

<sup>4</sup>*State Papers*, vol. 1, p. 1512; Martens, *Nouveau Recueil*, vol. 1, p. 436.

Germany. He represented Prussia in the Congress of Rastadt in 1797 and in 1807 entered the Council of State of Jerome Bonaparte, then King of Westphalia.

As a statesman von Dohm was distinguished by keenness of vision and wealth of knowledge, especially in the field of the complex relations of the States to the Empire. He was an indefatigable worker and recognized as a powerful orator. His diplomatic work and his writings are characterized by truth and he was regarded as an eminent writer by his contemporaries. The above work is perhaps the most important of his publications.

*Volume 2, page 100.*—At the close of the Seven Years' War, the British Government considered it fair that to redeem the debts resulting from that war and to pay the great taxes which were necessarily incurred in consequence of it, the colonies in North America should make a proportionate contribution. It found this course the more reasonable, because it asserted that the said war had been waged more especially in the interest of the colonies and because the peace which had resulted had especially founded and increased their security and their well-being. The colonists did not deny the reasonableness of the demand, but they maintained that by transferring their homes across the seas, their forefathers had not lost their rights as British citizens and the most important of these rights was that the Britisher could not be subjected to taxes to which through his representatives he had not given his approval. Thus, the North American colonists were ready to pay taxes if they were granted either a proportionate representation in the British Parliament, or a parliament of their own, as in the case of Ireland. The Government refused this request, and rather sought otherwise the arbitrary collection of taxes. The North Americans offered opposition; even in England their resistance met with approval. Many feared that the intentions of the court would be extended farther than had been stated. In the purposed subjection of North Americans to laws in the enactment of which they had not cooperated constitutionally, they saw an attempt to enlarge the royal powers, an attempt, which, if it were successful, might some day even endanger the liberty of the home country. But, although men of foresight advised against this course, although even the great Chatham warned against it with the whole force of his eloquence, the Ministry resolved to repress the resistance of the colonies by force. English troops and troops hired from some German princes<sup>1</sup> were

<sup>1</sup>Of the Landgrave of Hessen-Cassel, of the Duke of Brunswick, of the Margrave of Anspach and of the Prince of Waldeck. Moreover, a considerable number of Hanoverian troops were taken into English pay.

sent across the seas, but they were not numerous enough for the purpose, their leadership was bad, the attempted repression miscarried, and the courage of the Americans was increased through their success. Soon afterwards, thirteen colonies formed into an alliance, and solemnly and forever renounced any and every connection with the home country and at last declared themselves independent (July 4, 1776). They continued to achieve success in their war enterprises. A man of distinguished talents, of a noble and resolute character and of true wisdom was guiding them. This man was Washington.

In this civil strife, France did not behold the danger of an example for her own colonies, but merely an opportunity to revenge herself upon the rival who during the last war had made her feel his superiority of power, and had wrung from her a very disastrous peace. France assisted the rebellious colonies and had them assisted through her subjects, secretly at first and then in a more openhanded way. The American congress sent deputies to the French Court; among these was Franklin, an old man, of a noble simplicity of nature<sup>1</sup> whose attainments and scientific discoveries had already won for him great respect in both parts of the world. This man contributed much to win public opinion over to the cause of North America. But the deputies demanded even stronger assistance, and formal recognition. The hope of weakening England's sea power to a considerable extent, and perhaps even more the fear that a reconciliation between the motherland and the colonies might lead to disastrous consequences for France, determined the decisions of the Cabinet at Versailles.<sup>2</sup> Louis XVI surrendered the dictates of his common sense and his feeling for that which was right, to the presumed requirements of statesmanship and of the opinion of his advisers; he recognized formally the independence of North America; and on February 6, 1778, he concluded with the colonies a treaty of commerce and of friendship. This action meant war against England; but France would not have it elsewhere looked upon as a declaration of war. Both Powers avoided

<sup>1</sup>Benjamin Franklin, born in Boston, New England, 1706, was seventy-one years old, when he started upon this important mission

<sup>2</sup>In England, even in the English Parliament, it was openly proposed to grant the demands of the colonies, and then with united forces, to attack France which was fanning the flame of inner discord and inciting to the destruction of the two parties engaged. The American deputies also stated in Paris that if the French Court were late in giving the sought recognition and powerful support, there would undoubtedly be a reconciliation with the motherland, no matter upon what conditions.

the expression: Each desired to be looked upon as the party *attacked* and thereby ensure to itself the advantages which in such case were defined in treaties existing between it and other States. In the meantime, actual war on the seas between France and England had broken out (June, 1778). Even Spain, however much she must have cared not to favor the example of a successful rebellion on the part of the colonies, took sides with France as the latter's ally (June 16, 1779). England had no allies. In consideration of older treaties, England asked for assistance from Holland. But Holland denied that those treaties were applicable to the case. England accused Holland even of secretly favoring her adversaries, and finally declared war against the Netherlands (December 20, 1780).

From no Power could England have received greater assistance than from Russia. It was well known that Catherine II cherished deep predilection for the English nation, and that she harbored a decided dislike for France. Any rebellion of subjects against their lawful Government was most offensive to her. A swift and forcible repression of such conduct seemed to her the common duty of all regents. Upon these circumstances there was based the hope that it might be possible to enter into a treaty of alliance with the Empress through which she might obligate herself to give assistance. The negotiations for such a treaty<sup>1</sup> were entrusted to the British Ambassador at Petersburg, Sir Harris (subsequently Lord Malmesbury). This difficult transaction was worthy of a statesman combining great

<sup>1</sup>For the details of the negotiations here referred to we are indebted to the trustworthy accounts of Count von Goertz, who at the time these negotiations were being conducted, was Prussian Ambassador at Petersburg and enjoyed the special confidence of Count Panin. The work of this statesman appeared for the first time in 1797 in London, in an English translation of the French manuscript which had not yet been put in print, and its author was not named, but in the title of the work was merely referred to as a *German nobleman*. Subsequently it was brought out in its original text, at Basel, 1801, under the title: *Mémoire ou précis historique sur la neutralité armée et son origine, par le Comte Eustache de Goertz*. Apart from this reliable source I have made use of other printed information and of manuscripts that were accessible to me. The most important among the printed sources are those which Mr. von Albedyhl at the time of the negotiations the Swedish Secretary of Embassy at the Petersburg Court embodied in the *Recueil de mémoires et pièces relatives aux affaires du Nord de l'Europe pendant la dernière partie du XVIII<sup>e</sup> siècle*, Stockholm, 1798, and those of a Danish merchant, Mr. von Eggers, published in *Denkwürdigkeiten des dänischen Staatsministers Grafen von Bernstorff*, Copenhagen, 1800. These two well-known men confirmed the truth of the von Goertz reports, but added a few appropriate explanatory passages in reference to Sweden and Denmark; the biography by von Eggers especially contains many remarkable documents.

talents with broad knowledge and uncommon energy.<sup>1</sup> He realized indeed that he would be unable to secure the approval of the first Russian Minister of State, Count Panin, the Imperial Chancellor. Count Panin was well aware of the great exhaustion which had resulted from Russia's war with the Ottoman Porte; he was also aware of the disordered state of the finances and did not regard it as advisable, for the sake of foreign affairs, to inveigle the Russian realm into a war which was to be waged in another part of the world, and which, even if successful, would cost many lives and have for its immediate consequence the loss of the extremely advantageous outlet for Russian products during the maritime war. These reflections were correct and represented by a statesman whose influence, it is true, had been impaired, but whose opinion was nevertheless of great importance; and this influence and these opinions were to be the decisive factors in the resolve of Catherine II. With all her predilection for England, the Empress could not but realize that a participation in the maritime war would lead to manifold complications and deprive her of the free and independent situation in which she found herself, and, in addition, might therefore prove an obstacle to the execution of the great plan which lay closest to her heart.

Convinced that the Empress and her advisers would take this view of matters, Harris therefore resolved to attain indirectly that which he could not secure through direct negotiations. He wanted to win over to his side Potemkin, whose influence was greatest at the time, and through him secure the alliance with his homeland, and he was willing to resort to any and all means that would meet the well-known inclinations of that powerful favorite.<sup>2</sup> Through him he had the

<sup>1</sup>James Harris, born in 1746, entered the diplomatic service early in his life; in 1772 he became English Ambassador at Berlin, and in 1775 at St. Petersburg. Subsequently he was sent to Holland as ambassador, and the services which he rendered during the revolution of this land in 1787, brought about his elevation to the dignity of a lordship. Still later, in his efforts to secure peace between his homeland and France, he went to Paris in 1796 and to Lille in 1797. Although his efforts remained fruitless, yet justice has always been shown him for his proven skill, and I have heard the French envoys who negotiated with Harris speak of the latter with great respect. He was indisputably one of the most farsighted British statesmen of his time.

<sup>2</sup>It has been stated that large sums have been used to that end; here is a short account of this matter. The Ambassador of one of the Governments interested in the matter told Count Panin, in a confidential conversation, that Potemkin had been won over to the side of England, and he added that it was reported that he had received 50,000 rubles from the English Court. Panin contradicted the truth of the rumor, and with a smile he added: Potemkin is not the kind of man who can be bought for such an amount. The Ambassador



desire of his Government laid before the Empress and had endeavored to secure favor for it by expressing the hope that England would give powerful support to the favorite plan of the Empress, that is to say, to drive the Turks out of Europe. The proposition met with success; and without the knowledge of Panin, Harris had two secret audiences with the Empress. The Empress listened to him approvingly and gave him permission to procure authorization from his Court, first to bring about the termination of the war through the medium of Russia, and if this plan, as was thought likely, should be declined by the belligerents, to offer to conclude an alliance with England, with the express stipulation, that it should be enforceable both in the war then being waged, and in any future war of Russia, especially with the Ottoman Porte. Harris was soon able to present this proposition upon which he and the Empress had agreed; but now came the turn of the Imperial Chancellor to approve of this proposition and to suggest the kind of answer to be made thereto. This was where the superior weight of the statesman became evident, the statesman who understands the interconnection of affairs and who presides over their direction; he showed his superiority over the influence which comes only from personal favor. On grounds of the true interests of the Russian realm, Panin demonstrated to the Empress that under the circumstances then prevailing, no alliance with England could be concluded. The Empress was convinced, and with her approval, Panin stated to the English Ambassador: "That though animated by friendly sentiments for England, now that the latter was actually at war with several Powers, the moment was not appropriate to enter into an alliance with England. Russia desired the reestablishment of peace; her threatened participation in the war would have for immediate consequence a wider area of the field of operations and a prolongation of the war itself." Harris was downcast when he received this ministerial declaration; but in secret he received, it has been said, both from Potemkin and from Catherine, the assurance that the sentiments of the latter were still the same, and, while for the present the reasons of the Imperial Chancellor could not have been countered, still she hoped that circumstances would soon permit her to act in accordance with those sentiments. It seemed indeed that this was soon to have been realized. In November, 1779, two

came to understand the meaning of that which the Minister had implied only when upon further investigation he learned that Potemkin had not received 50,000 rubles but 50,000 pounds sterling.

Russian ships with cargoes of grains destined for the Mediterranean, were seized by Spanish privateers who maintained that the real destination of these ships was to reprovision the Fortress of Gibraltar. The Empress felt greatly offended; she asked for a peremptory satisfaction, and in case this was refused, she was resolved to attack Spain, the natural consequence of which would be her participation in the war and the conclusion of an alliance with England. This view she did not entrust to Count Panin; furthermore, without taking counsel with him, she gave orders to outfit in Kronstadt a fleet of fifteen line-ships and six frigates which, as soon as an unsatisfactory answer should be received from the Spanish Court, would unite with the English fleet. This intention she communicated in secret to the British Ambassador who notified to his Court this happy result of his negotiations. Potemkin was already rejoicing about his triumph over the Imperial Chancellor. In the meantime the outfitting of the fleet in Kronstadt could not long remain a secret. He divined its purpose, resolved to thwart it, and now he evinced the talents of the clever business man who, though the Empress was well-informed of the circumstances, and extremely bent upon self-government, succeeded nevertheless in getting her to do otherwise than she had planned. Without contradicting her in the slightest way, Panin apparently shared the sentiments of the Empress against Spain, approving heartily her intention to secure proper satisfaction for the interrupted free traffic of her subjects and for the offense against her flag. While he engaged the Empress in this purpose, he merely added that it would be even more in accordance with her dignity and sovereignty if she were not satisfied to call for satisfaction in this particular case, but to avail herself of this opportunity solemnly to declare before all Europe that the Empress would not permit the free traffic of her subjects with all lands and upon all seas to be disturbed through a war of other Powers and in which Russia did not participate; on the contrary, that she would demand this free traffic in the widest interpretation of that word for her subjects, and that she would consent to no limitations thereof except such as are established by treaties between Russia and other Powers, or where such treaties were wanting, then as might be recognized through the general opinion of the peoples. That there might be no doubt as to this general opinion of the peoples, Panin proposed to establish the principles with a just impartiality and which the Empress would wish to see followed. Panin

remarked that if she gave the assurance that the definite limitations of neutral traffic should in accordance with these principles be rigidly observed by her subjects, that none of the belligerent Powers should be favored by them, that on the contrary they should strictly observe neutrality toward all, she would on the other hand be justified in demanding that the free commerce of her subjects, with these limitations, should be interfered with by no one, and she might fittingly declare it to be her resolve to regard any attempted interference with the free commerce of her subjects as an act of hostility against her realm and to avenge it.

Panin further remarked that principles of such evident justice would meet with general approval. For a long time the practice of such principles had been the innermost desire of the peoples, and it had hitherto not been possible to carry them out merely because might had not been combined with wisdom and love of mankind; now, however, this rare combination had come to be realized in the Russian monarchy, and if the latter were to invite those peoples not engaged in the war to accept these principles, they would be quite ready to do so and enter into an agreement with the Empress for the purpose of demanding their recognition and observance, with a common power, from the belligerent Powers, which in the end forced thereto by their own interests, could not refuse to accept them. Through the realization of such a union among all the civilized peoples, Empress Catherine would rise to an entirely new and distinguished degree of glory; she would become the lawgiver of the oceans upon which there should be given security to ownership and freedom of traffic such as had never before been known. The Empress would become a benefactress not only to her realm and her contemporaries, but to mankind, by setting just bounds in advance to the atrocities in the wars which might arise in future centuries, by diminishing the savagery hitherto manifest in wars and by securing general observance of the dictates of reason. The realization of these principles would secure for the Empress the grateful respect of all peoples and of generations to follow.

Representations of this sort had their effect upon Catherine's ambitious spirit; fully she accepted the ideas of her wise Minister and ordered him to announce to the belligerent Powers the principles she had at the time before her, as the principles which she had prescribed to be strictly observed by her subjects, whose recognition she wished

to obtain from every other Power, and whose violation she would avenge as an act of hostility. She ordered at the same time that he invite the neutral Powers to join with Russia for the maintenance, with their united strength, of these principles. Thus, on February 28, 1780, arose the famous declaration which established the system of the armed maritime neutrality<sup>1</sup> in conformity with the following principles:

1. Neutral ships may sail freely from port to port and along the coasts of the nations engaged in war;

2. The goods of the subjects of the belligerent Powers is absolutely free on neutral ships, with the single exception of articles defined as contraband;

3. Contraband goods are such as have been so declared in Article 10 and in Article 11 of the treaty between Russia and England.<sup>2</sup> The Empress extends these provisions agreed upon between her and England, to all the other belligerent Powers;

4. A port is regarded as blockaded only when by the disposition and nearness of ships of the attacking Power it is so surrounded as to make entrance into it clearly dangerous. Neutral ships are forbidden to enter into ports of that description;

5. The lawfulness of the seizure of neutral ships can be decided only in accordance with these principles.

As shown by our account of it, this declaration does not owe its origin to long and mature reflection; it does not rest upon a noble and far-seeing statecraft directed to the realization of the general welfare of mankind; rather, it was merely the work of the skill of the statesman who imparted a different direction to the whim of his monarch than she had intended, and removed an embarrassment into which this whim had threatened to lead the State. Though this origin is less creditable than has frequently been asserted, yet the achievement of Panin who conceived it, and the achievement of Cath-

<sup>1</sup>*Post*, p. 273. All political documents in regard to the armed maritime neutrality are gathered in Martens' *Recueil*, 1st ed., vols. 2, 4, and also in my *Materialien für die neuere Geschichte und Statistik*, p. 4, and even more fully in v. Hennings, *Sammlung von Staatsschriften während des Seekriegs von 1776-1783*, Altona, 1784.

<sup>2</sup>According to these provisions, only weapons and real necessities of war are defined as contraband. See *post*, p. 343.

erine who accepted it, are not for that reason undeserving. The glory which Catherine II, led by her Minister, acquired in this matter, is the noblest of her reign. In order to show that this glory really belongs to her, I shall permit myself a digression which dates back to a somewhat earlier period.

It has not been claimed that Panin was first in determining the rights of neutrals. Ever since maritime wars have been waged, the nations not taking part therein have maintained that such wars could not change their relations, that they must be left free to continue their intercourse with any belligerent nation as in time of peace. The belligerents were not willing to grant this claim; they set forth two demands which were absolutely opposed to the claims of the neutrals. At first, the belligerents meant to seize the property of their enemy or of his subjects, no matter where it might be found. From this they derived the justification to stop and search neutral ships wherever they encountered them upon the open seas, which belong in common to all the peoples, in order to ascertain whether they carried enemy property. This personal search, they maintained, was absolutely necessary, because if they should depend in this respect upon the assurance of the neutrals, they would expose themselves to the danger that the latter's ships might carry necessities of war, and even troops to the enemy. The second demand was to the effect that a belligerent Power was justified in seizing upon the open seas any sort of weapons which the neutral was carrying to the enemy. Little by little this was extended even to materials that might be worked into weapons or used for war purposes. Nor were they willing to concede that ships, or materials that might serve for the construction of ships, should be carried to the enemy; finally they would not permit even necessities of life to be carried to the enemy on board neutral ships, nor permit neutral ships, no matter what their cargoes, to enter ports regarded as or even merely declared to be blockaded. The belligerents stated: Anyone who aids our enemy will in justice be treated by us as an enemy. The neutrals regarded all this as an unjust arrogation of right; they demanded for their subjects the unlimited right to transport merchandise of any sort to any foreign land, without any regard whatever as to whether or not such land was at war with others, or what use the purchasers intended to or might make of the articles carried to them. These contradictory demands were

opposed to each other in every maritime warfare.<sup>1</sup> Whoever possessed the greatest power made use of it; if a belligerent Power was in need of war necessities, or materials for the building of ships, or of food, and it had not power enough to protect the maritime commerce of its subjects against the attacks of its enemy, it welcomed the importations from neutral nations, and gladly granted rights from the application of which it had itself hoped for the greatest advantages. If on the other hand, a belligerent Power was not in need of foreign importations, at least not in the proportion of its opponent, and felt able vigorously to protect the traffic of its own subjects and to interfere with the commerce of the subjects of the enemy, it was in such case unwilling to grant to neutrals traffic with its enemy, it seized enemy property even on neutral ships, and in every importation of merchandise destined for the enemy saw an assistance furnished to the latter which would justify enemy treatment.

As the sovereignty of European nations came to extend over all parts of the earth, their traffic also spread over all the seas; maritime wars became more frequent, and conflicts between those who took part in such wars or remained neutral while they were being waged likewise increased. But it was proportionately realized that it was absolutely necessary that both parties, belligerents and neutrals, should yield something of their asserted respective rights. An effort was made to reach amicable understandings through treaties, in order to determine how much each of the parties interested should yield of its rights. The neutrals could not but realize that not to become partial toward one or the other of the belligerents, or to seem to be so, they could not absolutely maintain the free commerce of their subjects. In consequence, they obligated themselves not to furnish weapons and war materials to a belligerent Power, nor to supply it with ships or with materials employed in the construction of ships, nor to carry food to ports really blockaded. In their turn, the belligerents renounced their right to seize enemy goods on neutral ships, but with certain exceptions in regard to which they came to an agree-

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<sup>1</sup>Even in the statements of one and the same Power contradictions were frequently met with. A certain Power, may be, when neutral, declared the principles of a belligerent as most unjust and despotic, while when itself at war, it had asserted and followed the same principles. Thus while taking an active part in maritime wars, Holland restricted the rights of neutral commerce, which rights, since the middle of the eighteenth century, while she was at peace, she had demanded should be observed by all.

ment between themselves. The articles, the transportation of which to the belligerents was to be forbidden to the neutrals, were called contraband, and the various treaties contained more detailed stipulations as to what should be understood by contraband and what, coming within these stipulations, might be taken away from neutral ships. But it was impossible to define everything so exactly as was demanded in actual practice. There are so many things which may be used both for war and other purposes, or which in the first place, and through multiple treating, could be fashioned into implements of war. Numberless doubts arose in regard thereto; self-interest, which in such circumstances becomes very keen, developed ever greater doubts of this nature. The text of the treaties was susceptible of different interpretations; the belligerent was in favor of extreme restrictions, and the neutral in favor of all possible extension; each found his meaning expressed in the treaties, and superiority of power could not be persuaded to yield its viewpoint. In this way, the insistent claims on the part of the neutrals were brought forth in every maritime war, and just as insistent complaints were entered either by the one or by the other of the belligerents, and frequently by both at the same time; the weaker had to put up with that which he could not prevent. When peace was reestablished, the injuries sustained during the war began to be forgotten. The Powers which had waged the war, promised that in the future they would show greater respect for the rights of neutrals; the latter promised not to attempt further to increase those rights; in new treaties, agreements were come to with more complete and exact provisions. These promises and these treaties were lived up to as long as there was peace, that is to say, as long as there was no reason to violate them. As soon as a new maritime war broke out, might made its superiority again felt, and the claims of the belligerents and the neutrals came once more into conflict. The mutual claims and complaints reappeared.

For a long time the vexatious side of this unstable condition had been felt. All European nations carrying their commerce over the seas, even nations which could not themselves carry on such commerce, but which were interested in such traffic on account of the exportation of their products and their importation from abroad of articles they stood in need of, were loud in their complaints with regard to the violent interference with their activities and the seizure of property which befell them in every war between maritime Powers,

although their own Government had no part in it. Most of these complaints were directed against England, not because the British Government acted upon more unjust principles than any other Government, but because the numerous war fleets and the many corsairs which it was able to outfit, placed it, better than any other Government, in position to enforce the principles asserted in common by all the belligerents.<sup>1</sup> Every neutral Government, endeavored, as far as possible, to protect itself against such acts of violence and to uphold the rights of free commerce. These endeavors were successful in some cases while in others they met with failure. A single neutral Power was not by itself alone able to carry out its principles to a certain extent if it would avoid being drawn into the war. Only a union of several neutral States could secure respect from the belligerents. As a rule, however, the neutrals were not agreed as to the extent to which free traffic should be insisted upon, nor with regard to the limitations of such free traffic which they were willing to accept, in order to avoid the appearance of partiality. It is a fact that very frequently some of these neutrals were not free from such partiality toward either one or another of the belligerent parties, and generally jealousy crept in among them because each desired for itself the greater part of maritime commerce.

To overcome these difficulties and to establish precisely the principles that should prevail in all maritime wars, and finally to bring about a union of all European neutral Powers for the enforcement of these principles—all this forms the centrum of the idea which Panin proposed to his Empress who resolved to carry it out in all points. The basis of this proposition was not an imitation of that which had already taken place in former times; no other Government had ever

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<sup>1</sup>Impartiality demands the following explanation. The procedure of English courts against captured neutral ships and goods was harsh and oppressive, but not any more unjust than that of other belligerent Powers. During the American maritime war, the rights of the neutral commerce of France and of Spain were in fact violated even as mercilessly, but not as frequently, as those of England. And as we have already had occasion to point out, it was not an English, but a Spanish violation of neutrality which led to Panin's idea. In the seventh note to the collection of official documents by v. Hennings (see vol. 1, p. 56), already referred to, it is stated that in its regulations dealing with privateering, England generally and exactly observed the treaties concluded with neutral Powers and that she took care to distinguish between the different cases that arose, while France, at the beginning of the American war, issued a regulation, which was in violation of the many and important provisions of her commercial treaty with Denmark.



before conceived of this idea to the extent proposed by Panin, nor had any other Government commissioned this Minister to set forth the proposal. It may be definitively and reliably asserted, that, contrary to what has been stated in regard to this question,<sup>1</sup> it was not Frederick II who had done so, although long before the time Panin's plan was formulated, this monarch had emphatically demanded the return of property of his subjects captured by English corsairs, and through skilled use of circumstances, had secured actual indemnification for these citizens.<sup>2</sup> Nor did Denmark and Sweden suggest the idea to Panin, although it is an established fact that as early as 1778, Count von Bernstorff, the Danish Minister of State, had proposed to the Swedish King, Gustavus III, a common defense of free maritime commerce, and although both Powers had presented this suggestion to the Russian Empress. But the latter declined at the time to commit herself, both because of her partiality to England and because the need for such an alliance was not profoundly felt in Russia, since

<sup>1</sup>Herzberg has frequently so stated, but erroneously, because he had no clear idea of the difference between the rights always insisted upon by the neutral Powers in regard to the free commerce during the maritime war, and the peculiar merit of Panin's plan which gave precise definition of these rights and brought about a union between all the neutral peoples in defense of these rights. Frederick has no need of laying claim to a glory which does not belong to him.

<sup>2</sup>During the maritime war which was being waged in the fifties of the preceding century, several Prussian ships or goods of Prussian subjects on board of French and Spanish ships had been seized by English corsairs, and these captures had been upheld by English courts. Frederick demanded satisfaction for these acts, and when this satisfaction had been invariably refused, he organized a tribunal in Berlin, before which his subjects were ordered to present their claims and to prove them legally. Experts appointed by the King defended the action of England. The tribunal bidden to exercise the strictest impartiality decided in accordance with the law of nations accepted in treaties or through general public opinion, and to those plaintiffs to whom indemnification was awarded, the King had such indemnification paid out of the moneys which English subjects had formerly lent to Austria for the account of Silesia, and whose settlement Frederick had taken upon himself in the Breslau and Dresden peace. In the subsequent treaty of alliance of 1756, England approved of this procedure and to satisfy the claims of Prussian subjects who had sustained losses, she paid the sum of 20,000 pounds sterling. At the time of this dispute v. Herzberg, who was employed in the department of foreign affairs, wrote a deduction which was sent to London in 1747. This document is not included in v. Herzberg's political writings, but it is found in von Martens' *Ersählungen merkwürdiger Fälle des neuern Völkerrechts*, Göttingen, 1800, vol. 1, p. 240. I can not explain why Herzberg did not include this document in his collection, in view of the fact that he attached great value thereto, and, though erroneously, he maintained, that he had been through this instrument the first defender of the principles of neutrality. See his *Recueil*, volume 1, p. 464. It certainly has had no influence upon the resolve of Panin who, in all probability, had no knowledge of it, because at the time it had not been printed.

the Russians had hardly any active commerce outside of the Baltic Sea such as the Swedes and Danes had. It was for these reasons that at the time Catherine II would consent only to give measures for the protection of commerce along the coasts, and nothing definite was even agreed upon in respect of this.

It was not until the opportunity presented itself to impart a beneficent orientation to the ambition of the Empress and thus to induce her to take part in the maritime war, and in view of the fact that just then there had not occurred an English violation of the commerce of Russian subjects which might have led to the resolve of joining in the maritime war, that Panin thought the time had come to lay his great idea before the Empress with the hope of securing her approval of it. It may well be that the earlier proposition of Denmark and Sweden may have been in Panin's mind and that his courage was strengthened through the hope of the acceptance of his idea by these Powers, but that earlier proposal had no immediate effect upon him. Panin's proposition was the work of the instant, in order to escape an embarrassing situation into which Catherine's predilection for England threatened to rush the Russian realm. That this embarrassing situation led the Russian Imperial Chancellor to the conception of such a happy and beneficent plan must be accounted the merit of his own genius and of his patriotism which sought the true well-being of the realm and the glory of his monarch; this is a merit in which no other Court has had a part.

The declaration of the Empress was forwarded to the Courts of London, Paris and Madrid. The monarch herself had no idea whatever of the great consequences and of the impression that her declaration would have. Catherine had really no clear conception (a matter which seems extremely strange) of the real conditions of the powers that were at work in the world, for while she initiated a movement which was to bring great glory to her, she flattered herself at the same time at being thus able to satisfy her passionate predilection for England. Since the last violation of the commerce of her subjects had been committed by Spain, she really hoped that the immediate consequence of her declaration would be a satisfaction which she would secure from this Power by sending out the fleet she had ordered to be held ready. Panin did not deceive his monarch in this illusion in order that the work in which he had hitherto engaged and had turned out so successfully might not be destroyed before its final

consummation, and therefore he requested her to inform no one of the contents of the declaration which she had approved until after the couriers, bearing copies of the declaration, had started on their way to the different Courts. The Empress promised to do so and she kept her word. But she could not restrain herself from imparting confidentially to the English Ambassador, that in the immediate future a declaration, in her name, was to be sent to the belligerent Courts by which England would find all her wishes fulfilled. She permitted him even provisionally to communicate this agreeable piece of news to his Court. Greatly elated Harris did not delay in following up the hint that had been given him, and London looked expectantly to the receiving of the declaration which was to bring assurance of the mighty assistance which had been so long desired, by which the British Ministry hoped to put an end to the rebellion beyond the seas and to secure revenge from the Bourbons. Great however was the surprise of Harris when a few days later he was informed of the contents of the declaration which, in absolute opposition to the hopes that had been conveyed to him by the Empress, set forth in the most vigorous terms the upholding of the rights of neutral commerce whose recognition had been so decidedly denied by England. This declaration proved only to the advantage of the adversaries of Great Britain, since in accordance with its provisions, Great Britain's adversaries could be supplied with all necessities for the construction of ships through the ships of the northern Powers, and free exportation was at the same time assured to French and Spanish products on these same neutral ships. Harris could not but feel that his Court would hold him guilty of inexcusable neglect. The object of all his endeavors—an alliance with Russia—had suddenly come to naught and he must have felt that the righteous indignation of his Court would manifest itself so vigorously that it could not but lead to a rupture between the two countries. Simolin, the Russian Ambassador at London, was unable to describe satisfactorily the unpleasant impression caused by the unexpected declaration which he had handed to the English Court. The British Ministers complained to him and everywhere else, most bitterly, with regard to the Russian Court which, after having hypocritically, and for a long time, signified its friendly intentions, had now embarked upon a course directed solely against the interests of England, a course which seemed evidently to

have been inspired by the latter's adversaries.<sup>1</sup> Prince Potemkin endeavored to reassure the British Ambassador by telling him straightforwardly that the Empress had deceived him only because she herself had been first deceived by her Imperial Chancellor, by her not realizing how this declaration which she had been persuaded to send forth was absolutely contrary to her friendly dispositions for England. In vain he endeavored to convince him that if the English Ministry would but control its dissatisfaction, the Empress would surely find the means to destroy the effects of her declaration and to give quite a different turn to things. It was difficult to convince Harris; and to judge from what had happened, this Minister could naturally not hope to infuse belief in his Court for his assurances of the Empress' friendly dispositions. All he was able to accomplish was that the English Court did not indulge in bitter reproaches; the King of England contented himself with replying to the declaration of the Empress with the cold assurance that he should conform to his treaties with Russia, and that in their enforcement Russian subjects would find no reason for complaint. On the other hand satisfaction was felt at the Bourbon Court over Catherine's declaration. In terms most flattering the Kings of France and of Spain assured the Empress that the principles which had now been established, were exactly those whose application they had always demanded for their own subjects, and whose strict observance they had long since prescribed toward all neutrals. They stated that England alone refused to recognize these principles and that her refusal had been the cause of the war then being waged. Both Kings praised the resolve of the Empress who had called for a common defense of the most natural rights of all peoples. They gave her the most certain assurance that Russian subjects would never have cause to complain of any violation whatever of these rights on their part. The satisfaction called for from Spain was satisfied forthwith. The Empress felt deeply flattered by the conduct of the Courts of Versailles and Madrid. In spite of the efforts of Potemkin to counteract what had been accomplished by the issuance of the declaration, she now began for the first time to realize

<sup>1</sup>Attempts have been made to show that Count Vergennes had, through the medium of Sweden, brought to Russia the idea of the armed maritime neutrality; there is, however, no substantial basis for such an assertion. Neither Gustavus III, nor Panin, were in need of instructions from abroad with regard to the advantages of the free commercial traffic of neutral nations, and the Russian declaration was as unexpected at the French Court as anywhere else.

the wisdom of the measures which Panin had suggested; she felt that the constant maintenance of these measures would meet with general approval and bring to her true and everlasting glory. More and more she became convinced of the justice and of the great importance of the principles established by her and because she realized that England's presumptions would ever work against their effectiveness her predilection for England decreased considerably. The idea of an alliance with England was now given up altogether.

The hope of establishing the free intercourse of all peoples even during war times, for all times and in accordance with firm and immutable principles, became thenceforth Catherine's sole preoccupation; for some time she gave as much attention to this as to the creation of an oriental empire. She was now all desirous to bring all neutral maritime Powers formally to recognize the principles established and to promise to defend them in common. She had the satisfaction of seeing that her proposals were willingly met. No one of the sovereigns did perhaps show more zeal than Gustavus III, King of Sweden.<sup>1</sup> With great power of foresight, this monarch combined a sturdy desire to advance the welfare of his subjects in every possible manner. Since the beginning of the maritime war being waged at the time, he had very much desired to procure for his subjects all the advantages of neutral commerce, and he had most unwillingly borne the interference for which England especially was responsible. He had fitted out some war-ships for the protection of Swedish commerce, and invited Denmark and Russia to enter into a union with him that might be profitable alike to all three; but as has already been noted, Russia could not before that time be persuaded to join such a union. Now, however, Gustavus eagerly availed himself of the favorable disposition of the Empress. On July 21, 1780, he informed the belligerent Powers that the principles established by Russia met with his entire approval, that he had prescribed a strict observance of them by his subjects and that he was furthermore resolved, in union with Russia, and in accordance with those principles, to protect the free traffic of his subjects against every and all Powers. The Russian declaration met with similar approval at the Danish Court, although England set everything there in motion to prevent Den-

<sup>1</sup>He was the nephew of Frederick II, born in 1746; he abolished in 1772 the limits imposed upon sovereignty since the death of Charles XII; he was assassinated in 1792.

mark's accession thereto, and consented even to less rigorous provisions as to that which, according to older treaties between the two countries, was defined as contraband. Count Bernstorff,<sup>1</sup> who in those days directed the political affairs of Denmark, was very friendly to the English Court, and unwillingly engaged in acts that were unpleasant to that Court; but the justice and the welfare of the State, in the judgment of this clear-seeing statesman, outweighed every other consideration. Denmark, in turn, likewise informed the belligerent Powers on July 8, 1780, that it fully acceded to the Russian principles and that it would have them absolutely observed.

**GEFFCKEN:** *Das Recht der Intervention and Die Neutralität* (Articles in Holtzendorff's *Handbuch des Völkerrechts*. Hamburg, 1889).

Friedrich Heinrich Geffcken. German publicist; born in 1830; died in 1896; member of the Institute of International Law. After receiving his doctor's degree at Bonn he entered the diplomatic service of the Hanseatic cities in which service he remained, occupying positions at Paris, Berlin and London, until 1872, when he became professor of public law at the University of Strassburg. Ten years later he retired and devoted himself to his favorite studies and to the publication of numerous works, taking especial interest in questions of international law.

Among the works of Geffcken are French and German editions of Heffter's *Das europäische Völkerrecht der Gegenwart* (eighth German edition, 1888), *La Question du Danube*, 1883, *Die Alabama-Frage*, and numerous articles published in Holtzendorff's *Handbuch des Völkerrechts* on international law and the papacy, treaties of guaranty, treaties of alliance, right of intervention, maritime warfare, and neutrality.

*Volume 4, § 45, page 158.*—An unlawful attack by a State, barbarous conduct of war, and an utter disregard of all the rights of neutrals represent a common danger for all other States against which the latter are justified in interfering and against which they should interfere upon the appeal of those concerned. Looked at from this point of view, the armed neutrality of 1780 was a legitimate intervention by

<sup>1</sup>Incontestably one of the noblest statesmen of the last century; was born in Hanover in 1735, and died in 1797.

which the Powers interested declared that they would no longer submit to the arbitrary treatment of neutral Powers on the seas on the part of England.

*Volume 4, § 129, page 609.*—While the neutral State refrains from favoring any one of the belligerents, it demands on the other hand that the belligerents should strictly observe its independence. War must cease at its frontiers and in the presence of its rights. When this is not done, then the neutral State is justified in opposing such a violation with all means at its command, in demanding satisfaction therefor, and eventually in defending its right by armed forces. For, inasmuch as the neutral State declares its impartiality in a war that is being waged, it does not thereby renounce any of its sovereign rights, and therefore does not renounce the right to uphold its independence with armed power; and many rules have had their origin in the mere violation of neutral rights. An armed neutrality therefore does not violate the rights of either belligerent party, so long as it is merely defensive.

§ 133, *page 620.*—England, which regarded the principles of the *Consolato del Mare* as its rule, insisted that “free ship, free merchandise” was valid only through special agreement. She granted this only as the price for a return service and from political interests, and was indeed very careful not to put herself under obligation in this way except to those to which she had specifically granted such right. An effort was made also, to oppose by treaties the ever-growing extension given by the belligerents to the meaning of contraband. Nevertheless, the list of forbidden articles increased constantly according as such articles might be usable in time of peace or in time of war. England did not merely include in this list timber, cordage, sail canvas, iron, lead, tar and pitch, but even provisions, money and articles of clothing. Another English encroachment upon the rights of neutrals was the so-called *rule of the war of 1756*, according to which neutrals were not to be permitted to carry on trade during the war with the colonies of a belligerent, if such trade was not permitted foreign ships in time of peace. As a rule, in those times the trade with the colonies was reserved to the national ships. In the Seven Years’ War English cruisers cut off all connection of France with her colonies; hence, Dutch merchants were permitted to carry on that trade for the duration of the war. England however took away all Dutch ships which enjoyed that privilege and condemned them, together with their cargoes, although

she had granted to Holland the right of "free ship, free merchandise"; for the English jurists state that neutrals had only the right in time of war to continue their ordinary peace commerce with the belligerents, but not a commerce to which they were not entitled in time of peace which they could only secure through the success of one of the belligerents and only at the cost of the other, while thus colonies might maintain themselves which otherwise would fall into their power and France could use her merchant ship crews for manning war-ships. They state that such Dutch ships were French *per adoptionem*, hence had become enemy ships. In connection with this rule there arose the theory of the *continuous voyage*. The neutrals sought to escape seizure by sailing from the colonies to a neutral port from which they might subsequently transport their cargoes to an enemy port. The English prize judge, Sir W. Scott, declared forfeited those neutral ships together with their cargoes which were met with on their voyage from a neutral to an enemy port, if it was found that the cargoes were shipped previously from an enemy colonial port to the neutral port; for in such case, he stated, he was dealing with a continuous voyage from the colonial port to the enemy port which was the real object of the voyage, and intermediate stations touched at by the neutral could not be considered, *dolus circuitu non purgatur*. Lord Stowell applied this theory of the continuous voyage to contraband and asserted that the condemnation was justified even though its enemy destination was not yet established, but the captain was ordered to take the cargo either to an enemy or a neutral port, according to the circumstances. He further asserted that a neutral ship was guilty of violating the blockade at the moment when it started on its way to a blockaded harbor; finally England misused the concession of the neutrals which has its being in the blockade, by the so-called paper blockades declaring whole stretches of coasts with all their ports as blockaded when in fact they were not cut off from traffic.

But in view of the superior power of England, it availed the neutral Governments but little to protest against these encroachments, so long as they were not resolved to compel the observance of just principles or to secure for their subjects indemnification for the losses they had sustained. This was accomplished by the armed neutrality of 1780. In the war between England and her rebellious colonies of North America, privateers of the latter had captured several English ships *en route* to Archangel. Empress Catherine II therefore turned to Den-



mark with the proposition to protect those regions of the North Sea with a common fleet and to preserve the ships of all nations from being captured if they sailed to Russian ports within ten miles along the coast. The Danish Minister, Count Bernstorff, admitted that such a measure, which would deprive the belligerent parties of the objects of their attacks on a portion of the open sea, was not justifiable in international law, and that furthermore it would only accrue to the benefit of England whose ships carried most of the commerce destined for Archangel. In consequence, he proposed to extend the intended common action and recommended the establishment of certain fundamental principles in whose defense against England all the neutral Powers should pledge themselves by treaty, and he thus formulated principles which were later on set forth in the armed neutrality. Russia, however, was not then ready to enter into such an arrangement, because unlike Denmark she had not a merchant fleet engaged in trade on all the seas, but wished only to protect commerce destined for Archangel. The question entered into a new phase only after Spain, as a third belligerent against England, allied herself with France and North America. By the treaty of February 6, 1778, France and North America had approved the principle "free ship, free merchandise," and the French ordinance of July 26, 1778 had extended this principle to all neutrals. Thus, French cruisers were forbidden to capture neutral ships, even though they were sailing from one enemy port to another enemy port, if such ports were not blockaded. Ships carrying contraband were to be subject to seizure, the contraband itself confiscable, but the ship was to be released in case the contraband did not constitute three-fourths of the value of the cargo. This concession was however subject to cancellation if the enemy should not observe the like within six months. Though she joined the alliance of the two Powers, Spain did not recognize these principles but applied England's rule, that the flag does not protect the cargo, against that country. Two ships freighted with Russian grain to Mediterranean ports were seized by Spain under the idle pretext that they were intended to reprovision Gibraltar. This act so embittered Catherine II that she ordered a fleet equipped for the protection of Russian property, and directed Count Panin to notify the foreign Powers that she was determined to do everything necessary for the interests of her subjects and of all neutral sovereigns. Count Panin was accordingly directed to explain to the belligerent Powers the principles which Russia considered as proper in regard to

neutral commerce, and to invite the neutral Powers, Denmark, Sweden, Portugal and Holland, to enter into an agreement with Russia to that same effect. Panin planned this explanation which contained almost word for word the points in the Bernstorff note of 1778, so that the Danish Minister is the spiritual author of the armed neutrality. Catherine signed this note and its contents were sanctioned by treaties with Denmark of July 9th, and with Sweden of August 1st. In the interval between 1781 and 1783, the Netherlands, Prussia, Austria, the Two Sicilies, Portugal, France and the United States acceded thereto. Spain reserved to herself to apply the English principles with regard to England. (Note of April 18, 1780.) The declaration contains the following:

1. That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

2. That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

3. That, as to the specification of the above-mentioned merchandise, the Empress holds to what is enumerated in the 10th and 11th articles of her treaty of commerce with Great Britain (June 20, 1776), extending her obligations to all the Powers at war.

4. That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

5. That these principles shall serve as a rule for proceedings and judgments as to the legality of prizes.

This last point is expanded in the treaty with Prussia of May 8, 1781, Article 3 (4), as follows:

"That neutral vessels may be detained only for just cause and when the facts are perfectly evident; that they shall be adjudged without delay; that the procedure shall always be uniform, prompt, and legal; and that, in addition to the compensation granted to vessels which have suffered loss without having been at fault, complete satisfaction shall in each case be rendered for the insult to the flag."<sup>1</sup>

It is quite true that the allied States and especially Russia surrendered later on the principles which they had regarded as the palladium of the neutrals and as the basis of the maritime law of nations;

<sup>1</sup>*Post*, p. 399.

nevertheless, the armed neutrality of 1780 retains its great historic and international significance. With the sole exception of England, the most important States had agreed upon a formulated establishment of the most important points of the laws of maritime warfare. This was a hard blow to England which she sought in vain to mitigate by declaring her readiness to grant by exception to the Russian flag that which the armed neutrality had in formal principles claimed for all flags. Although she yielded none of her established principles, England, willing or unwilling, had to be considerate to the neutrals, in order not to burden herself with still more claims, and as a result, the claims of the declaration were fully observed in the latter years of the war; therefore, the armed neutrality demonstrated that even the strongest maritime Power—and the more certainly so, the longer a maritime war lasts—can be compelled to adapt her conduct to the claims of the neutrals, as soon as the latter have reached an agreement among themselves.

§ 164, *page 740*.—In the treaty of 1742 between France and Denmark it is stipulated that entrance to a port is closed by at least two ships or by a coast battery; in the treaty of 1753 between Holland and the Two Sicilies, we read: “No ports or cities shall be held besieged or blockaded unless they are invested from the sea by six war-ships from a distance a little beyond cannon range of the place, or from the shore, by cannon batteries and other works, in such manner that no vessel could enter therein without passing under the cannon of the besiegers.” . . . England alone continued to order fictitious blockades by mere ordinance, and in 1756 she declared all French ports blockaded. A large number of neutral ships were seized in consequence, especially Dutch ships, and the States General complained vigorously against this conduct which they themselves had initiated; and while they secured the release of their captured ships and cargoes, yet England did not surrender her claim. The admiralty court declared even in 1780, that “through her insular situation England naturally blockaded all Spanish and French ports.” The armed neutrality of 1780 remedied this abuse by declaring under Article 4: “That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.” This provision was not a declaration of the rule which all other States with the exception of England had already theretofore accepted,

but aimed at the establishment of a new rule under the pressure of a political conjuncture which compelled England to accept it although she protested vigorously against it. This principle was soon afterwards violated by the most of the contracting Parties, by Russia in her war with Turkey in 1787, by Sweden in her war with Russia in 1789, and in the course of these years, Russia concluded treaties with Portugal, France and the Two Sicilies which departed from the principle of the armed neutrality; for instance, in Article 27 (3) of the treaty with France of January 11, 1787, it is provided: "That in order to determine that which characterizes a blockaded port, such term shall be applied only to a port which shall be attacked by a number of vessels proportionate to the strength of the place, which vessels shall be sufficiently near so that there may be evident danger in entering into the said ports."<sup>1</sup> We find the same wording in Article 18 (3) of the treaty of 1787 between Russia and the Two Sicilies.<sup>2</sup> In the meantime, the second armed neutrality of 1800 did not only repeat the text of the first, but added also that a ship shall be considered guilty of a breach of blockade only "when after having been warned by the blockade commander of the state of the port, she attempts to penetrate therein by the use of force or by ruse." England however scored a success when in her treaty with Russia of 1801, acceded to by Denmark and Sweden, Russia not only surrendered this additional article, but agreed that a port should be regarded as blockaded, "where there is, by the dispositions of the Power which attacks it with ships, stationary *or* sufficiently near, an evident danger in entering." Through the particle "*or*" England secured the movability of the ships, while the "stationary and sufficiently nearby" of the armed neutrality made the conjuncture of the two moments the condition of a lawful blockade. The opposition criticised the fact that England had consented that the ships must cruise in the neighborhood of the blockaded port, because in such case they could not capture ships on the open seas; but actually the British Government paid little attention to this concession. While it had unreservedly recognized that the blockading Power must have a sufficient fighting force to cause the blockade to be observed, it declared through its order of May 16, 1806, that all ports, coasts and rivers from the Elbe even to Brest "should be considered as being

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 4, p. 210.

<sup>2</sup>*Ibid.*, p. 237.

actually blockaded"<sup>1</sup>—a paper and cruiser blockade—for which the retaliatory character could not be advanced which the British admiralty set up for the subsequent blockade of all the ports of the mainland as a defense against Napoleon's continental embargo. The Berlin decree of November 21, 1806, which promulgated this embargo was on the contrary the answer to the aforementioned ordinance. Its preamble: "The British Isles are declared in a state of blockade" seems ridiculous, since in those times France had not a single ship on the high seas. In fact, the isolation was merely to be carried out through the exclusion of English commerce from all the ports of the mainland. The Order in Council of January 7, 1807, forbade the commerce of neutrals between ports from which the British flag was excluded, and the order of November 11, 1807 declared these ports "subject to the same limitations for commerce and navigation as if they were closely blockaded by the sea forces of His Majesty," and thus acknowledged that there was no virtual blockade of the ports.<sup>2</sup>

**GEFFCKEN:** *Le Droit International de l'Europe*, by August Wilhelm Heffter. Translated by Jules Bergson. Fourth French edition, enlarged and annotated by F. Heinrich Geffcken. Berlin, Paris, 1883.

*Page 362, note 1 [by Geffcken].*—The war waged by England from 1775–1783 with its insurgent American colonies had, by the participation of France and Spain, assumed a general aspect. France and Holland maintained the principle that the flag covers the goods; but Spain and England refused to recognize this principle. The latter especially employed its preponderant naval strength in a way that worked great hardship to neutrals. At the same time England eagerly sought an alliance with Russia. According to the memorials of Goertz and of Sir James Harris (Lord Malmesbury), the English envoy had won Potemkin over to his side, and their scheme was only frustrated by a clever stroke on the part of the Minister of Foreign Affairs, Count Panin, a

<sup>1</sup>Martens, *Nouveau Recueil*, vol. 1, p. 436.

<sup>2</sup>*Ibid.*, p. 446.

partisan of Frederick II, who had been hostile to England ever since that country had deserted Prussia during the Seven Years' War. Panin had dazzled the eyes of the Empress with the armed neutrality league of 1780 as a movement in the interest of civilization, and Catherine did not have a very clear notion of the scope of this measure, which was really directed against England. This version is no longer tenable, in view of the recent publications of Katchenovskiy (Prize Law), of Mr. de Martens in his commentary contained in the collection of treaties concluded by Russia, volumes 2 and 3, and of Eichelmann, *Der Bewaffnete Neutralitätsbund Russlands vom Jahre 1780*. These works show that the league was a plan carefully thought out by Catherine and followed from 1778 by negotiations with Denmark for the purpose of safeguarding the rights of neutrals. It was Count Bernstorff, the eminent Danish Minister, who gave practical form to the ideas of the Empress, and the seizure of a Russian vessel by the Spanish Government was the final blow which removed the difference of opinion between Russia and Denmark with regard to the measures to be taken. The declaration adopted by the two Powers was submitted to Sweden, the Netherlands, France, the United States, Prussia, and Austria, with a view to their accession. It was the first great collective measure of maritime law, for the States which acceded to the Russian declaration adopted also its system in their intercourse with each other, and in spite of its imperfections, it was a progressive measure uniting neutrals for the defense of their rights against the arbitrary action of England. This explains the cordial welcome that greeted the Russian proposal and assures it an important place in the history of international law. Therefore if Catherine subsequently asked Sir James Harris, as he relates, "But in what way does this neutrality, or rather armed nullity, hurt you?" it was merely a part of her tactics. Harris's answer is no less interesting. "In every way that it possibly can," said he. "It lays down new laws which protect the commerce of our enemies while exposing ours; it leaves them their merchant ships for the transportation of their troops; it tends to confuse our friends with our enemies. We shall do everything we can for your ships, but Your Imperial Majesty surely does not intend by this armed neutrality that every nation shall enjoy the same right." On Catherine's refusal to abandon her declaration, England, in order to win over Russia and other neutral Powers, consented to make special concessions by treaty, but refused to adhere to the declaration, although Fox, who had entered

the Ministry in 1782, looked upon it with favor. On making peace with France in 1783, England simply renewed the aforesaid stipulations of the treaty of Utrecht. It refused a similar concession to Holland, which had enjoyed these rights since 1634, as well as to the United States, and thus succeeded in destroying the coalition of the signatories of the declaration, which was gradually abandoned by all the Powers which had adhered to it. On March 25, 1793, Russia even signed a treaty with England, prohibiting neutrals to give even indirect protection to the commerce or property of the French, with whose country they were at war (Article 4) Martens, *Recueil*, vol. 5, p. 115; Fox, *Memorials*, I, III). The wars of the French Revolution in general revived these abuses. The allied Governments forbade neutrals to carry into France provisions and goods from foreign sources. The Convention followed suit in its own defense, and on March 9, 1793, abrogated the principle that the flag covers the goods. In 1794 England proclaimed the rule that neutral nations had the right to carry merely their own products, but not those of other countries (Katchenovsky, p. 77, note <sup>1</sup>). France replied to these measures by declaring every vessel to be lawful prize that was laden even partially with goods emanating from England, no matter who was their owner, and drew up a list of articles *reputed* to be the products of English factories, no matter where they actually were made. The Baltic States, on their part, proclaimed anew in 1800 the principles of armed neutrality, with certain additions.<sup>2</sup>

**HALL:** *The Rights and Duties of Neutrals*. London, 1874.

William Edward Hall. British publicist and member of the Institute of International Law, born in 1835, died in 1894. Mr. Hall is known in international law for his *Rights and Duties of Neutrals*, 1874, and especially for his masterly *Treatise on International Law*, first published in 1880.

The latter work has run through six editions, and has been regarded as an authority—indeed, a classic—from the date of its appearance, in 1880. The writer's national bias crops out betimes, and has subjected the work to no little criticism.

<sup>1</sup>Footnote 2, *post*, p. 129.

<sup>2</sup>For further commentary by Geffcken, see Heffter, *post*, p. 110.

*Page 106.*—It was natural, however, that the secondary maritime Powers should in time accommodate their theories to their interests. They were not sure of being able as belligerents to enforce a stringent rule; they were certain as neutrals to gain by its relaxation. Accordingly, in 1780 Russia issued a declaration of neutral rights, among the provisions of which was one limiting articles of contraband to munitions of war and sulphur. Sweden and Denmark immediately adhered to the declaration of Russia, and with the latter Power formed the league known as the first armed neutrality. Spain, France, Holland, the United States, Prussia, and Austria, acceded to the alliance in the course of the following year. Finally it was joined in 1782 by Portugal, and in 1783 by the Two Sicilies.

It is usual for foreign publicists to treat the formation of the armed neutrality as a generous effort to bridle the aggressions of England, and as investing the principles expressed in the Russian declaration with the authority of such doctrines as are accepted by the body of civilized nations. It is unnecessary to enter into the motives which actuated the Russian Government;<sup>1</sup> but it is impossible to admit that the doctrines which it put forward received any higher sanction at the time than such as could be imparted by an agreement between the Baltic Powers. The accession of France, Spain, Holland, and the United States was an act of hostility directed against England, with which they were then at war, and was valueless as indicating their settled policy, and still more valueless as manifesting their views of existing international right. It was the seizure by Spain of two Russian vessels laden with wheat which was the accidental cause of the original declaration, and within a few months of adhering to the league France had imposed a treaty upon Mecklenburg, and Spain had issued an ordinance, both of which were in direct contradiction to parts of the declaration.<sup>2</sup> The value of Russian and Austrian opinion in the then position of those countries as maritime Powers is absolutely trivial. Whatever authority the principles of the armed neutrality possess, they have since acquired by inspiring to a certain but varying extent the policy of France, the United States, Russia, and the minor Powers.

*Page 141.*—The second armed neutrality reasserted for a moment

<sup>1</sup>The intrigues which led to the issue of the Russian declaration are sketched by Sir R. Phillimore, iii, Sec. 186; see also Lord Stanhope, *History of England*, chap. lxii.

<sup>2</sup>All the signatories to the declaration of the armed neutrality violated one or other of its provisions when they were themselves next at war.



the principles of 1780, but one of the articles of the treaty concluded between England and Russia in 1801, to which Denmark and Sweden afterwards acceded, provided that the property of enemies on board neutral vessels should be confiscable. In 1807 Russia annulled the convention of 1801, and proclaiming afresh the principles of the armed neutrality, declared that she would never depart from them;<sup>1</sup> but in 1809 an ukase was issued under which "ships laden in part with the goods of the manufacture or produce of hostile countries were to be stopped, and the merchandise confiscated and sold by auction for the profit of the crown. But if the merchandise aforesaid compose more than half the cargo, not only the cargo, but the ship also shall be confiscated."<sup>2</sup>

**HEFFTER:** *Das Europäische Völkerrecht der Gegenwart auf den bisherigen Grundlagen.* Eighth edition, with notes and commentary by F. Heinrich Geffcken. Berlin, 1888.

August Wilhelm Heffter. German publicist; born in 1796; died in 1880; professor at the Universities of Berlin, Bonn, and Halle; member of the Institute of International Law.

His treatise on international law, the above work, first appeared in 1844, and has been translated into several languages. It is considered authoritative in international law and its value has been enhanced by the notes of Geffcken. Heffter has been reproached with the failure to present personal ideas, but, as Geffcken says, he does at least present with legal precision the actual state of international law in force at the time he wrote.

*Page 335, § 151.*—Notwithstanding the general agreement as to the principles of international law, there is much uncertainty as to their application to the right of the free international traffic, especially of maritime commerce. No uncertainty prevails with regard to the absolute freedom of the neutral nations to engage in neutral commerce; but the specification and designation of such traffic and the removal of certain annoyances hitherto met with and consequent upon the state

<sup>1</sup>Ortolan, vol. 2, p. 156.

<sup>2</sup>Martens, *Recueil, Supplément*, vol. 5, p. 485.

of war between other nations demand the future adoption of certain principles relative to the restrictions which neutral commerce in reference to the belligerent parties must bear. For centuries, this question has been a bone of contention between the nations; it is the one question which emphasizes the decided want of an international code of laws or at least of an international tribunal; in the practical solution of the question the right of the stronger triumphs and the absence of rights of the weaker figures conspicuously. And the question is not merely in dispute in the international practice, but no theoretical agreement as to principles has ever been reached. Both, in certain countries, have arrayed themselves with the mask of legal prescriptions and judicial decisions, and by this means secured a certain imposing authority; yet, such laws and judicial decisions are nothing more than the political acts of individual States, by which the other States are not bound, except where the weaker States are considered which stand in fear of the enforcement of those laws, notwithstanding their unfairness.

In no other part of the science of international law has so little progress been made. Still, even in this matter, there may be had generally sound principles for the States with which our system deals, especially if a law is to prevail among them, in case the legal relation between them as they have hitherto been represented, correspond to the reality of things. It is especially from the point of view of this reality of things that we must attempt to solve the various international questions of controversy, by regarding as the law of the common will all the rules which have been generally and mutually accepted in international practice; but where such will is absent, the solution must be found in the study of the question as a whole.<sup>1a</sup>

<sup>a</sup>[Commentary by Geffcken: As stated by Hall (*International Law*, 2d ed., Oxford, 1884, § 232), all commerce is divided into purchase or sale of the merchandise and forwarding of the same on payment of freight rates. Purchase and sale are quite free between neutral and belligerent subjects; within their own territory, neutrals may even sell war material to the belligerents, and the party not concerned in the transaction is not entitled to file objection, so long as the neutral Government has no part in it and has not forbidden such sale

<sup>1a</sup>A thoroughgoing presentation of the theory and practice in this matter will be found in the work: *Researches, historical and critical, in maritime international law*, by James Reddie, Esq. In the main, it is, of course, only a defense of the cardinal points in the British practice: but with certain concessions. In respect of this, see observation by Ortolan, vol. 2, p. 432.

on account of national interests. If this is done, as for instance, when in 1870, Belgium and Switzerland embargoed the exportation of arms, it may be all right from a political point of view, but it may not be compelled. The other part of commerce, that relating to the shipping of neutral merchandise to belligerents, is likewise, in principle, free; but when the neutral Government is not obligated to prohibit such shipping, the belligerent can certainly not permit two different things at the same time: (1) permit neutral subjects to forward merchandise by sea to his opponent, merchandise which is to enable him to continue the war; and (2) permit them to forward merchandise to an enemy port which he is bent upon cutting off from all traffic. Belligerents are therefore entitled to hinder the shipping of contraband and entrance into blockaded ports; the neutral Government does not interfere; it tells its subjects merely that if they engage in such affairs, they shall do it at their own risk, and reserves to itself to see to it that the belligerents act in accordance with the rules of international law if they exercise their right to interfere with the acts.]

§ 152.—The history of this question<sup>1b</sup> begins really only with the sixteenth century, since which time maritime commerce has no longer been the exclusive privilege of a few nations less active in other fruitful achievements, or of societies and cities, but has strongly appealed to every nation, and has been regarded as a capital source of the well-being of nations and fostered by the Governments. The rivalry between the various national interests which arose as a consequence, led, in the States able to do so, to an increase both of the mercantile and the war navies, and to a jealous struggle between the nations, from which but one State, through gigantic effort, issued with a power and importance and in abiding form such as neither the ancient nor the modern world had theretofore witnessed. Around this centrum the whole modern maritime warfare has been gravitating. In appearance following the simple rules of former centuries, and attributing departure from those rules only to the arbitrariness of treaties, the State to which we are alluding has not been lacking in means, by resort to its principles, to make all other States feel its superiority of power, and even to exert it to an unbearably harsh degree, which brought about an unavoidable and necessary reaction. This happened first in the seventeenth century during the frequent wars between England on the one hand, and Spain and France, on the other; since the time of Louis XIV, by abandoning the ruinous system which had theretofore generally prevailed and under the thriving rise of commerce, France had created for herself a new code of maritime laws through the

<sup>1</sup>See the excellent presentation of it in Hautefeuille, *Des droits des nations neutres*, 3d ed., Paris, 1868, vol. 1, pp. 26 *et seq.*; and Gessner, *Droits des neutres, Préliminaires*, pp. 2 *et seq.*

ordinance of 1681 whose principles were increasingly welcomed, and which, especially in the Utrecht treaty of peace, were given a wider international application.<sup>c</sup> Toward the end of the past century, during the revolutionary wars in North America and in France, the reaction became even more pronounced. In 1778 France issued new regulations in favor of neutral navigation; soon thereafter in 1780, with the help of Panin, a northern Minerva created the system of the armed neutrality.<sup>d</sup> Shortly afterwards was secured the accession thereto of several maritime Powers for the application of definite principles with regard to the British trident, and through which, although the alliance as first formed was again dissolved, certain contractual concessions were wrung from her.<sup>e</sup>

The last struggle against the British system was directed by Napoleon through the creation of the continental system which, if it had been carried out against the allies, with inflexibility and wise moderation, and if it had led to a real, cordial unity among all the continental Powers, would have been the right weapon, and by its hateful, partisan, and even venable execution, and at the same time by its repression of all freedom in continental life, it assumed an ugly form in history. The idea of it, however, was that of a great man! At the time there was no other means available to curb England's supremacy of the seas. But in comparatively recent times, in 1853 and 1854, the alliance of the western Powers against Russia has led to a more generous practice,<sup>1</sup> and the British perplexing need of a cordial agreement with France to the important provisions of maritime law of the Paris Congress, April, 1856, which, as has already been said, have been accepted unreservedly by almost all the remaining maritime Powers.

<sup>b</sup>[Commentary by Geffcken: It has already been remarked that the history of this question begins with the principles established in the *Consolato del Mare*, in accordance with which, ownership of the merchandise decides the matter. England accepted these principles as her practice in maritime law. France departed from them through her ordinances of 1538, 1543, 1584 and 1681, according to which, enemy goods, along with the neutral ship transporting them, as well as the neutral cargo under enemy flag, were subject to capture. "*Confiscantur*

<sup>1</sup>Soetbeer, *Sammlung offizieller. Actenstücke in Bezug auf Schifffahrt und Handel in Kriegszeiten*, Hamburg, 1854, 1855. C. W. Ascher, *Beiträge zu einigen Fragen über die Verhältnisse des Seehandels in Kriegszeiten*, 1854. Drouin de Lhuys, *Les neutres pendant la guerre d'Orient*, 1868. Geffcken, *Zur Geschichte des orientalischen Krieges 1854-56*, Berlin, 1881, pp. 280 et seq.

*ex navibus res, ex rebus naves.*" The *ordonnance sur la marine royale* of 1681, which for other reasons has indeed become famous, does certainly not deserve here the praises bestowed upon it by Heffter. Only through treaty, exceptions to this ordinance were admitted, as for instance, with the Hansa, May 10, 1615 and 1655, according to which, and in all cases, Hanseatic ships and their neutral cargoes were to be free. From France and other States, Holland likewise secured through treaties, the application of the principle "the flag covers the merchandise," which rested on no sound basis, for if it is agreed that enemy goods on friendly ships is free, it does not follow from this that friendly goods on board enemy ships is subject to capture. It was a transaction which in the interest of their transportation of merchandise the Hollanders carried through, to secure for themselves its monopoly in time of maritime war between other Powers. As compared with this advantage, it was of but slight importance, if they recognized to the belligerents the right of capturing friendly goods on enemy ships.]

°[Commentary by Geffcken: This appreciation of the matter by Heffter is not correct; the French maritime ordinance of 1681 had no effect upon the Utrecht treaties which, themselves, were really less important than they seem to be by their text. Though at the time, England and France agreed that in a maritime war which would leave one of them neutral, its flag should cover the enemy cargo, it was, as has been observed by Gentz, more of a recognition in name than in fact. After the decline of the Dutch and Spanish sea power, England and France remained the two great rivals, and it was quite improbable that a maritime war would take place which would leave either the one or the other of the two neutral. England was therefore most careful not to admit the same principle in regard to Spain, while France did not generally adopt it until she issued her ordinance of July 26, 1778 (Boeck, p. 58.)]

¶[Commentary by Geffcken: See Bergbohm, *Die bewaffnete Neutralität 1780-83. Eine Entwicklungsphase des Völkerrechts im Seekriege*, 1884. It gives for the first time a documentary presentation of the subject, and in comparison with it, all that which had been written before upon this matter seems rather antiquated. Lord Malmesbury's commentaries and F. Martens' notes in the *Recueil des Traités conclus par la Russie*, II, III, VI, p. 108, are still worthy to be read. The history of the matter is, in a few words, as follows: In the war between England and her rebellious American colonies, corsairs of the latter had captured several English vessels on the way to Archangel. Catherine II turned therefore to Denmark with the proposal to protect commerce in those regions of the northern sea through a common fleet; Count Bernstorff, the Danish Minister, realized that this would not be feasible according to the law of nations, and he suggested that the intended common action be extended by establishing fundamental principles in regard to the rights of neutral commerce, and by obligating themselves through a treaty to defend these rights against England. At the time, the Empress was not prepared to take this step, and she agreed to Bernstorff's idea only after Spain, under futile prettexts, had seized two ships loaded with Russian grains. Panin, her Minister, drafted a declaration

which reproduced Bernstorff's proposals almost literally, and these were sanctioned through treaties with Denmark and Sweden, dated July 9 and August 1, 1780, respectively. The declaration was acceded to subsequently by the Netherlands, Prussia, Austria, the Two Sicilies, Portugal, France and the United States. The first declaration by Russia is dated February 28, 1780; it was really the work of Bernstorff. . . .

It is true that the contracting Parties, and Russia especially, renounced subsequently the principles which they had established and regarded as the palladium of the neutrals. In spite of this fact, the armed neutrality of 1780 retained its great importance. Once at least and with the single exception of England, the most important States had agreed upon a formal construction of the laws of maritime warfare, while England, although she did not formally surrender any one of her principles, had, nevertheless, willingly or unwillingly, to be regardless of the members of the alliance, not to make any more enemies for herself.]

\*[Commentary by Geffcken: In the peace with France, 1783, England simply renewed the provisions of the Utrecht treaty, but refused to grant them to Holland to which they had been applicable since 1634, and to the United States. The French revolutionary wars led soon again to the ancient abuses. The coalition Governments forbade the neutrals to carry to France provisions and merchandise of foreign origin. The National Convention acted even so and on May 9, 1793, abolished the principle that the flag covers the cargo. In 1794, England declared that neutrals might ship only their native products, and not those of other countries. France declared every ship legitimate prize, though it were only in part loaded with English goods, no matter to whom the latter belonged. In 1800, the Baltic States renewed and completed the principles of the armed neutrality. The most important event of those years is the treaty between England and Russia, June 17, 1801, which may be designated as the extreme limit of the concessions of England (Article 3, *post*, p. 597), and for this reason, it was vigorously attacked in the English Parliament as a weakening of English rights, even though England refused by it to recognize the principle that the flag covers the cargo. The treaty was not of long duration, for in consequence of her declaration of war against England in 1807, Russia redeclared the principles of the armed neutrality, to which England answered "His Majesty proclaims anew those principles of maritime law against which the armed neutrality was originally directed" (*post*, p. 638). In 1809, Russia renounced the aforementioned principles, issuing an ukase, August 1, with orders to seize enemy goods under neutral flag and the ship as well, in case the goods represented more than one-half of the value of the cargo.]

†[Commentary by Geffcken: This praise bestowed upon the continental system which aimed at controlling the seas through the land, seems little warranted; that which Heffter regards as the outgrowth of that system is predicated by the very nature of it. He did more harm to the Continent than to England, whose commerce expanded constantly, in spite of the seven year blockade, and gave her the monopoly of the seas. The United States alone opposed the claims of England and declared war against her in 1812.]

**KATCHENOVSKY:** *Prize Law: particularly with reference to the Duties and Obligations of Belligerents and Neutrals.* Translated from the Russian by Frederic Thomas Pratt. London, 1867.

Dmitrii Ivanovich Katchenovsky. Russian publicist; born in 1827; died in 1872; professor of international law at the University of Kharkov. Professor Katchenovsky is well known in the literary circles of the Continent for the extent and accuracy of his attainments and is the author of several learned and interesting works, most of which were written between 1855 and 1865. He lived abroad from 1858-59 and delivered two important lectures in England which attracted the attention of jurists, and he was a promoter of Western-European ideas and much interested in political reforms in Russia. In 1864, his health failing, he devoted himself to art, in which he had always been interested, and he became curator of Kharkov University museum of fine arts, founded chiefly through his efforts.

Among his writings may be mentioned: *A view of the history of political sciences in Europe*, 1859; *The present state of political sciences in Western Europe and in Russia*, 1862; and an article entitled *Progress of the science of international law in Germany and England*, 1856.

*Page 61.*—In the year 1776 commenced the memorable struggle between England and the United States of America. Experience proves that civil wars are particularly cruel, and are seldom conducted on any principle of justice or international law. Consequently, in order to remove all pretexts on the part of the belligerents for the oppression of commerce, the neutral Powers hastened to publish decrees in the same spirit, enjoining their subjects under fear of punishment to observe strict impartiality in that war. But these measures were to no purpose, as, amongst the belligerents, France alone made any perceptible modification in her former practice about neutral trade, whilst Spain openly avowed her intention of acting towards the neutrals in the same way as they allowed the English to treat them. Great Britain returned to her former system, and, taking advantage of the internecine character of the war, endeavored wholly to suppress neutral commerce. Regarding her enemies as rebels, and their allies as abettors of civil war, she forbade all nations to have any connection with her former colonies. The English privateers, taking advantage of this feeling on the part of their Government, and in the hope of all their captures being condemned as prizes, attacked every suspicious looking vessel they encountered. It must be added that the list of contraband

goods was considerably enlarged, and the definition of blockade rendered still more vague at that time. Marriott, then judge of the admiralty court, laid down the following principles of maritime war as immutable: 1. The belligerent has a right to seize on board neutral ships everything which might be made use of by the enemy for his defense. 2. Great Britain, lying between the German Sea and the Atlantic Ocean, forms, by its very position, a natural blockade to all the ports of France and Spain. 3. The rights of neutral nations depend on the customs or practice of the belligerents; treaties are but temporary privileges, valid only as long as the admiralty court finds it convenient to make use of them. The effect of this prize practice threatened ruin to neutral commerce, since it was evident that England would allow no maritime law but her own to be enforced. Happily, however, international justice at that time found powerful supporters in other parts of Europe; for, from the year 1780, Russia formed with seven other Powers a strong coalition, which checked the violence of privateers, and secured the rights of neutrality.<sup>1</sup>

There was no difficulty in the allies agreeing upon fundamental principles: they resolved—

1. Only to permit the seizure of neutral vessels where the duties of neutrality had been unquestionably violated.

2. To require from the belligerents that judicial proceedings against neutrals should be commenced without delay, and in accordance with an uniform, clear, and legal system.

3. In case of neutrals having unjustly suffered, to compel the belligerents not only to pay damages, but also to make compensation for the insult offered to the neutral flag, otherwise to have recourse to reprisals.

4. To adopt these rules as the principle of a future maritime code (*Code Maritime Universel*).

The armed neutrality soon succeeded in its object, and put an end to the irregularities of the admiralty courts. France, Spain, Holland and the United States revoked their former decrees, and published new ones in conformity with the declaration of the Empress Catherine.<sup>2</sup> Great Britain herself was at last obliged to yield to the

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<sup>1</sup>*Post*, p. 273. See Additional Note at end of this Period, *post*, p. 123.

<sup>2</sup>The French Government had already in the year 1780 directed their admiral and privateers not to molest neutrals, even though apparently destined to enemy's ports, and in no case to capture them, unless they had a cargo of war contraband, or were engaged in the transport of English troops, or harbored Englishmen under a neutral flag. *Code des prises*, vol. 2, pp. 866-868, 875, 886; Martens,



influence of this powerful coalition, and mitigated, though not avowedly, the severity of her prize laws.<sup>1</sup> One of the best results of the coalition was the diminution of privateers, according to the testimony of a contemporary, who says, "At the end of the war privateering had almost disappeared, and neutral commerce flourished almost as much as in a time of profound peace."<sup>2</sup>

At the conference of Versailles, the commercial treaty of Utrecht was again renewed by England, France, and Spain; but knowing by experience that such renewals were of little practical utility, and fearing that the belligerents would return to their former malpractices, the members of the "armed neutrality" resolved to proceed with the work which had been so successfully commenced. Accordingly the principles of 1780 were more fully developed, and having been introduced nearly by all the nations of Europe into their commercial treaties and alliances, found support even in America. In the course of the next ten years, namely, from the peace of Versailles to the year 1793, measures were taken and rules laid down in order to reform the prize law of the belligerents, and to secure the independence of neutrals at sea. Reviewing the treaties of that time<sup>3</sup> we find in them some important clauses concerning the right of visitation (*visite*), evidence in prize courts, and the legal forms of proceeding.

1. *Visitation*. The declaration of 1780 made no mention of the right of search, and as long as the "armed neutrality" remained a powerful coalition, privateers did not venture upon a search or any other irreg-

*Recueil*, vol. 3, p. 163. The Dutch decree of 1781 also adopts the principles of the armed neutrality. Martens, *Merkwürdige Fälle*, vol. 2, p. 313, Article 42. The same may be said of Spain and of the United States of America, whose decrees are to be found in Martens, *Recueil*, vol. 3, p. 161; Wheaton, *Histoire*, vol. 1, p. 367.

<sup>1</sup>In the years 1781-2, secret instructions were given to the English privateers, to the effect that they should carefully abstain from collision with neutrals. With respect to Russian ships, England showed no intention to enforce visitation, as we may conclude from the letter of Lord Malmesbury to Count Panin. See *Lord Malmesbury's Diary and Correspondence*, London, 1845, vol. 1, pp. 232, 319, 410. The Cabinet of St. James, however, never formally recognized the armed neutrality, but made every effort in its power to dissolve the coalition. Of the English statesmen Fox alone did not agree with his fellow-countrymen, and even intended afterwards to conclude with Holland, through the mediation of Russia, a treaty of peace on the principles of 1780. Lord Malmesbury, vol. 4, pp. 25, 26, 42, 53; Wheaton, *Histoire*, vol. 1, pp. 367, 368.

<sup>2</sup>See Dohm, *Denkwürdigkeiten meiner Zeit*, Lemgo, 1815, S. 153. See also Büsch, 284.

<sup>3</sup>The treaties of 1783-1793, in which are developed and explained the principles of the "armed neutrality," are to be found in the 3rd and 4th volumes of the collection of Martens.

ular proceedings. In order to prevent at a future time a repetition of such abuses, the treaties (1783–1793) generally assume that visitation ought to be confined to the verification of the papers; while search, breaking open coffers, interrogating the crew, etc., are all strictly forbidden to privateers. However, if on board the ship there are not found any papers, the privateer may, with the concurrence or at least in the presence of the owner or master, put a seal upon the cargo, make an inventory of it, and bring the ship into a port of his own country. Search then can only be made in the presence of an officer of the admiralty court, and immediately before the commencement of the suit. A neutral subject, on board of whose ship are found contraband goods, may deliver them up to the privateer, and is entitled to continue his voyage with the rest of the cargo without molestation.<sup>1</sup> The declaration of 1780 is also silent on the question, whether a ship sailing under neutral convoy is free from visitation, but shortly after the establishment of the “armed neutrality,” England and Sweden entered into an angry discussion on that subject, whereupon the Swedish Government addressed a note to that of Russia, to ask its opinion upon the point, and received for answer, that the subjecting of ships under convoy to visitation would be insulting to the national flag; and that cruisers or privateers of the belligerents ought to be satisfied concerning the neutral character of the ship and cargo, with the verbal information of the officer in command. This opinion of the Russian Court met with general approbation, and being considered as one of the principles of the “armed neutrality” was inserted in almost all the treaties of that time from the year 1782.<sup>2</sup>

2. The *evidence* in prize cases is, according to treaties, the ship's papers,<sup>3</sup> namely, passport, and documents about the nature and destination of the cargo. As to the ownership of the cargo the neutral is not bound to have documents relating to that, because the property, even of an enemy, is considered free under a neutral flag (*frei Schiff, frei*

<sup>1</sup>With respect to the treaties of the United States with Holland (1782), and of Russia with Denmark (1782) and Austria (1785), see Martens, vol. 3, pp. 427, 468; 4, p. 72, etc. The same principles are adopted in a treaty between France and England (1786). Martens, vol. 4, p. 155.

<sup>2</sup>Martens, *Merkwürdige Falle*, vol. 2, pp. 35–8. Here also we may refer to the treaties of Russia with Denmark, and of the United States with Holland (1782), of Russia with Austria (1785), also with France, the kingdom of both the Sicilies and Portugal (1787), and of Prussia with the United States of America. Martens, *Recueil*, vol. 4, pp. 72, 196, 229, 315.

<sup>3</sup>See particularly treaties of United States with Holland (1782), with Prussia (1785), and of England with France (1786).

*Gut*). The passport, which is not usually given for more than two years, and should be renewed on the return of the ship to its own country, ought to contain the name of the ship and of its owner, as well as the domicile of the master, which is to be duly particularized. Prize courts formerly condemned all ships built in the country of the enemy, and purchased by neutrals in the time of war, without admitting any excuse in justification. The "armed neutrality" endeavored to put an end to this practice, though the different Governments did not come to an agreement, without a long discussion as to the alterations which should be introduced into the maritime law on this subject. The points in dispute, however, were at last settled, by empowering the neutral to order ships to be built in the country of an enemy on his own account, or to purchase those already built, and the belligerent was bound to admit, as conclusive proof, the bill of sale. To this was added that the subject of an enemy who had been naturalized, or who was employed in the service of a neutral Power, should enjoy the rights of a neutral.<sup>1</sup>

3. With respect to the manner of conducting legal proceedings in prize cases, the treaties of 1783-93 contained but few rules; they only require that cases between privateers and neutrals should be settled impartially, without delay, and in conformity with international justice. Should the judgment be considered unjust or oppressive, diplomatic agents are entitled to intervene in behalf of their fellow-countrymen, and to bring the case before the court of appeal.<sup>2</sup> A privateer, having captured a neutral ship without sufficient grounds, is held liable to damages to the injured party; but unfortunately the amount of compensation is nowhere determined in treaties; Holland and the United States alone have laid down carefully defined rules on the subject, namely, that the privateers shall repay all the legal expenses, and a

<sup>1</sup>See treaties mentioned in notes, pp. 64, 65. In the treaty between England and France (1786) we find the following rules relating to prize courts. "Si quelque navire marchand se trouvait dépourvu de ses lettres de mer ou de certificat, il pourra être examiné par le juge compétent, de façon cependant que par d'autres indices et documents il se trouve qu'il appartienne véritablement aux sujets de l'un des dits souverains, et qu'il ne contienne aucune marchandise destinée pour l'ennemi, il ne devra point être confisqué mais sera relâché avec sa charge."

<sup>2</sup>In addition to the treaties already cited, reference may be made to that between Denmark and Genoa (1789), in which the influence of the "armed neutrality" is apparent. Martens, *Recueil*, vol. 4, p. 438. Denmark and Genoa imposed upon their consuls the duty of defending neutrals in the prize court, and appointed advocates for the same purpose; it was also agreed, when the evidence of neutrals and captors was conflicting, to give the preference to the former, "parceque l'intérêt du capteur doit toujours rendre ses accusations suspectes." This remarkable rule, however, does not occur in other treaties.

percentage for *lucrum cessans* to the owner, and all persons who may suffer from the illegal capture.<sup>1</sup> All the above-mentioned treaties are imbued, so to say, with one and the same spirit, having a tendency to lessen the cruelties of maritime war, to put an end to the illegal plunder of neutrals by privateers, and to mitigate the harsh decrees of prize courts. It is remarkable that the authors of the "armed neutrality," even when belligerents, adhered to their principles. As an instance we may cite the ordonnance of the Empress Catherine on privateers (1787), issued on the occasion of the war with Turkey, which, being in perfect conformity with the declaration of the Empress in 1780, is, according to the opinion of Hautefeuille, one of the most liberal decrees ever published by a belligerent. The Empress prescribed to privateers the courtesy due to neutrals, and greatly restricted the right of visitation, confining it to particular seas.<sup>2</sup> Sweden in the decree of 1788 also sanctioned the principles of the "armed neutrality," and conformed her prize jurisprudence thereto.<sup>3</sup> The declaration, however, of the Court of St. Petersburg, published at the end of the war with Sweden (May 6, 1789), was much more extraordinary, for therein the Empress promised the protection and the assistance of the Russian fleet to the merchants of all neutral nations.<sup>4</sup> Thus the freedom of neutral commerce became every year more prevalent in Europe, and naval wars were greatly mitigated. Some States found it even advantageous to put an end to privateering. The first attempt to that effect was made by the United States of America in a treaty with

<sup>1</sup>By the clauses of this treaty the rights of neutral merchants in the prize courts are fully secured. Martens is perfectly right in observing, that neutral merchants can not be considered as compensated by the mere payment for the cargo plundered and injured, but are also fully entitled to an indemnity for what might have been gained, if the vessel had in due course reached its place of destination (*lucrum cessans*). *Essai*, s. 30, p. 95. Other treaties abrogate some unreasonable contributions imposed on neutrals, as, for example, fees or other duties. Martens also gives a full account of the conventions relating to prize jurisdiction of that time, and of the decrees on that subject.

<sup>2</sup>Martens, *Recueil*, vol. 4, p. 336. However, it is to be observed that in that war the Greeks, and not native subjects of Russia, received letters of marque from the Empress. In the first war with Turkey (1767-74) Russia had not recourse to privateering. Martens, *Recueil*, vol. 2, pp. 32, 33; *Essai*, p. 46, s. 9.

<sup>3</sup>Martens, *Recueil*, vol. 4, pp. 394-410. In this decree Sweden admitted the immunity of the neutral flag, and exempted from visitation ships proceeding under neutral convoy. Only in the definition of war contraband does the decree not altogether correspond with the declaration of 1780; for instance, it includes in the list of prohibited goods, besides arms and ammunition, money, but the Swedish king, in consequence of a protest from several powers, subsequently revoked this decree, and returned to the principles of the "armed neutrality."

<sup>4</sup>*Ibid.*, p. 428.

Prussia, in which also the right of seizure of war contraband was modified into that of preemption (*droit de préemption*).<sup>1</sup> The question of the abolition of privateering was subsequently taken up by France.<sup>2</sup> Unfortunately these humane projects were not destined to be carried into effect, for in 1793 there commenced in Europe a long revolutionary war, which threw all international relations into confusion, almost annihilated the political institutions of Europe, and shook to its foundation the very idea of neutrality.

#### ADDITIONAL NOTE BY THE AUTHOR

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In a juridical work like the present, the "armed neutrality" is chiefly considered in its effects upon treaties and international customs; as to the political events which led to its foundation they are recorded by some contemporaries of Catherine II. It would be long, and even useless, to enumerate here all the books and pamphlets which give or pretend to give information on the origin of this celebrated league. As the chief authorities upon the subject may be cited the memoirs of M. Dohm (*Denkwürdigkeiten meiner Zeit*, Hannover, 1814-15-18); Count de Goertz (*Mémoires sur la Neutralité armée*, Bâle, 1801, Paris, 1804), and Sir James Harris' (Lord Malmesbury) Diary, London, 1845.

These diplomatists, though differing from each other in some details, look upon the whole affair nearly in the same light. According to their opinion, the declaration of 1780 arose out of a court intrigue, aimed at the influence of Prince Potemkin, the great favorite of the Empress, and had no other object than to ruin his political power. Catherine herself seemed to have been almost an involuntary agent in the hands

<sup>1</sup>The treaty of 1785 was concluded by Franklin, the well-known opponent of privateering. In his opinion, this institution ought to be put an end to for the good of mankind and the maintenance of peace. The custom of plundering merchant ships is a remnant of piracy, it produces no benefit at all. At the commencement of a war, indeed, some rich ships may fall into the hands of the captors and be taken by surprise, but the enemy soon becomes more careful and protects the commerce of his subjects by strong convoys. Consequently in the course of war, as the number of privateers increases so does the value of the captures diminish.

<sup>2</sup>In 1792, the French diplomatic agents were instructed to ascertain how far foreign nations were inclined to abolish privateering. Unfortunately the political circumstances of that time prevented any sympathy or confidence being placed in the intentions of France. With the exception of the Hanseatic Towns (which made no use of privateers) not a single state of Europe responded to the question proposed. See Büsch, 290, 3; Ortolan, *Diplomatie de la mer*, vol. 2, p. 56; Cauchy, *Du respect de la propriété privée sur Mer*, annexes, N. 1-4. As to the United States, they answered the French communication favorably, though rather in a vague manner.

of Count Panin, the Minister of Foreign Affairs, with whom the scheme originated. The defense of neutral rights furnished this statesman with a good pretext for overthrowing his rival. By giving full credit to this testimony, and deriving all our information from the same source, it might be supposed that the authors of the "armed neutrality" hardly knew what they were about, and that they only became fully aware of the importance of their acts from subsequent events, and when almost the whole of Europe had acceded to the principles of 1780. Now all this story seems to us, if not a pure invention, at least a great misrepresentation of the facts. The truth is that the success of the Russian policy having excited great envy, the open and secret enemies of the "armed neutrality" had recourse to every kind of obloquy and literary abuse, in order to discredit it in the eyes of the world. Consequently the most absurd rumors, about the authors of the coalition as well as their motives, were circulated abroad, and have been repeated up to the present time. However difficult it would be to refute these calumnies without access to the State archives, where the whole correspondence relating to the subject is deposited, we humbly submit to our readers the following considerations, which are founded upon documentary evidence, or derived from Russian historians.

The first circumstance to be noticed is, that the contention between Prince Potemkin and Count Panin had no such signification, with reference to the "armed neutrality," as foreign diplomatists seemed to imagine. The principal question in dispute was the English alliance; in fact, the first of these statesmen strongly recommended his sovereign to take part in the American war; the second, on the other hand, advised her to stand aloof from the great conflict, wherein she would be no gainer, and might lose the advantage of being appealed to as an impartial mediator. As long as the Empress hesitated to avow her decision on the best course to be pursued, the opportunity for a neutral league was necessarily delayed. It may be also easily understood why the Cabinet of St. Petersburg kept all these proceedings a secret from the English Minister, whose connections with Potemkin were probably as well known to Catherine as to the Minister for Foreign Affairs. It must not be supposed, however, that the declaration of 1780 burst forth as the feat of a skilful courtier, devised to injure a rival. We have every reason to believe that this act had been long in preparation, before the Empress found a favorable opportunity for offering it to Europe, as the most efficient measure against the violence of belligerents. Some diplomatic papers of that time, published from the State archives of St. Petersburg a few years ago (see the *Maritime Magazine*, or the *Morskoi Sbornik* for 1859, Nos. 9-12), prove that the seizure of Russian merchandise near Cadiz by Spanish cruisers was only the last of many grievances reported to Catherine by her Ministry. From the very beginning of the war the atrocities of privateers induced the Russian Government to take serious measures for the protection of commerce. Thus in 1778, when American cruisers made their first appearance in

the northern seas, the Empress gave orders that a squadron should be stationed near Archangel to convoy English traders. Soon afterwards Catherine represented to Denmark and Sweden the urgent necessity of common action against cruisers in the Baltic (*Lettres du Comte Panin à M. Sacken, Chargé d'Affaires à Copenhague, 16 Août, 1778, et note du Comte Bernstorff, 28th Sept., 1778*). It is remarkable, however, that Count Panin, by recommending the Empress to declare in London and Paris her firm intention to close the entrance of the northern sea to all cruisers, prevented at that time all further proceedings against belligerents, and this declaration appeared to him quite sufficient for the purpose. In the confidential report addressed by the Count to Catherine, and approved by her on the 22d Dec., 1778, we observe that his intentions were then not so hostile to England as Sir James Harris expected. The dangers of a breach with Great Britain are therein set forth without reserve. The Russian Minister submits to his sovereign the future line of conduct to be adopted towards belligerents. In his opinion the question of neutral rights, being very intricate, great moderation and circumspection were requisite to be used in dealing with it. He strongly recommends that Russia should attend to her own interests, and avoid a close alliance with her Baltic neighbors upon that question. Thus a cooperation with Sweden appears to Count Panin not desirable for many reasons. "The Swedish policy of defending neutral rights," says he, "may cause us great difficulties, and involve our Government in a disastrous war with the greatest maritime Power of Europe." Accordingly, when the Cabinet of Stockholm in 1779 made the first proposals for a treaty to that effect, they were declined by Catherine. In short, the documents we have cited here give us no indication whatever that Count Panin was the real author of the "armed neutrality." On the contrary, the spirit of the declaration of 1780 seems not to be in accordance with his former views as well as with his general conduct as Minister for Foreign Affairs. We are more inclined to think that the new scheme of neutral policy was originally devised by the Empress herself. The first precedent for it she might have found in the convention of 1759 mentioned before. It must be added that her various reading and intercourse with foreign diplomatists made her better prepared to conduct the foreign affairs of Russia, according to her own enlightened views, than, like some other sovereigns, to follow the advice of her council. In fact, the political talents and literary accomplishments of Catherine are so well known, that they afford sufficient grounds for our adhering to that opinion. Many important state papers were the production of her mind and pen. The authenticity of her correspondence with Voltaire is undoubted, and was never disputed. The same may be said of the "General Instruction for the Government of the Empire." This monument of the legislative wisdom of the Empress, having been translated into foreign languages, is as well known in Western Europe as in Russia. But the most improbable part of the story about the origin of the "armed

neutrality" is that Catherine when signing the declaration did not understand its meaning. Whatever her faults might have been, she was perfectly able to appreciate the consequences of her political acts. It must not be forgotten that Sir James Harris puts into the mouth of one of his confidants the following remarks upon this new plan for the defense of neutral rights: "the declaration is the child of the Empress' own brain." The five articles were sent in the rough draft to Count Panin, who made no addition to the original; see *Lord Malmesbury's Diary*, vol. i, p. 266. The Count himself, who very soon fell into disgrace, is reported to have abjured all participation in devising the principles of 1780. When questioned upon this point he once said, "they who think that anybody suggested to the Empress the idea of a neutral league, or has now power enough to put it out of her head, are greatly mistaken." *La Cour de Russie, il y a cent ans*, Berlin, 1858, p. 253. All these facts seem rather to corroborate our views than otherwise. However it may be, we sincerely hope that the absurd fables about a court intrigue will fall to the ground, as soon as the historical truth, contained in the diplomatic documents, shall be fully brought to light. May this be done by future inquiries. Nothing but a careful study of the whole reign of Catherine can lead impartial men to safe conclusions upon the "armed neutrality." It will then be easily admitted that its origin is due as much to the natural course of events as to the liberal tendencies of the Russian Empress, and the philosophical spirit of her time.

#### PERIOD IV

##### From 1793 to 1815

The continental Governments having, as we have seen, agreed on the fundamental principles of prize jurisprudence, had entertained the idea of drawing up a code of neutrality; but these intentions, originating in the declaration of 1780, were frustrated by the breaking out of the French Revolution. The political events which occurred in France, and afterwards in other countries, not only prevented the further extension of the "armed neutrality," but afforded a pretext to the belligerents for resuming their former harsh proceedings. Consequently international treaties having been rescinded in the midst of the general commotion of Western Europe, admiralty courts began to oppress neutral merchants under the authority of the severe instructions of the belligerents, and privateers not only refused to acknowledge the immunity of the flag, but even disavowed the doctrine of the *Consolato del Mare*. In vain the northern Powers endeavored to form a permanent coalition for the protection of their commerce. The league they entered into (1800) only continued a few months, and failed of attain-



ing the success which attended the first armed neutrality at the time of the American war. By the treaty of St. Petersburg (1801) the allies even made some concession to England, and considerably modified the principles of Catherine II. In general, during the French revolutionary wars, the power of the neutral Governments diminished, and England returned to the system of the Middle Ages without opposition. At the end of the 18th century the decisions of Sir Wm. Scott (afterwards Lord Stowell), supported by the British navy, were enforced on neutrals. The English Government, however, failed in attaining an absolute supremacy at sea. When Napoleon established the continental system (1806) Sir Wm. Scott was obliged to give up the rules of English practice, which he had invariably followed before. In the course of time the belligerents, attacking one another with retaliatory measures, proceeded to the last extremities, and declared neutral commerce unlawful, and even criminal in their eyes. In this manner, the very idea of neutrality was, so to say, repudiated, and privateers as well as prize courts were converted into instruments of commercial inquisition. Such are the final results of this destructive period. In order to define them more accurately, we propose to direct our attention to facts<sup>1</sup> and to lay before the reader: 1. The successive modifications of the principles of 1780. 2. The prize law of England and France under Sir Wm. Scott and Portalis. 3. The irregular character of privateering and prize proceedings at the period of the continental system.

The decree of the year 1792, according to which France renounced privateering, was not carried out. Having declared war against Great Britain the National Convention issued letters of marque, and accordingly many small vessels were dispatched for the purpose of plundering ships engaged in commerce. The former laws, however, respecting maritime prizes, and consequently the ordonnances of the year 1778, were confirmed, and privateers received instructions to respect the immunity of the flag.<sup>2</sup> In the meantime, England not only refused to adopt the principles of the "armed neutrality," but skilfully took advantage of circumstances, in order to add to the severity of maritime warfare. Observing that the enemy suffered for want of provisions, she adopted what might be called a system of famine (*système de famine*), namely,

<sup>1</sup>Compare generally Comte de Garden, *Histoire de traités*, vol. 6, pp. 301-381; Wheaton, *Histoire du droit des gens*, vol. 2, pp. 13-106.

<sup>2</sup>See the French ordonnances respecting privateers and prizes which were published at this time, Martens, *Recueil*, vol. 5, pp. 376-400; 6, pp. 752-776; Lebeau, *Nouveau code des Prises*, 4. (Paris, an IX.)

entered into conventions<sup>1</sup> with the principal Powers of Europe in order to forbid the importation of corn and food into the French ports, and the carrying on of any intercourse with France. To counteract these measures the National Convention had recourse to retaliation, and by the decree of May 9th, 1793, enjoined cruisers and privateers to seize neutral vessels destined for England, laden with corn or provisions, or freighted with English merchandise. By this decree English property was declared lawful prize, and even neutral cargo, subject to the right of preemption (*droit de préemption*) on the part of the French Government. These arbitrary rules were to remain in force until the interested Powers obtained from England a strict observance of the rights of neutrality. A few exceptions were made in favor of Denmark, Sweden, the United States of America, and other Governments with which France had treaties of commerce.<sup>2</sup>

For the purpose of meeting this ordonnance of the Convention, England extended still further the right of preemption, had recourse to a stricter system of blockade, and gave to privateers such instructions against neutrals as authorized them to stop with impunity all merchant vessels.<sup>3</sup>

The Danish commerce suffered particularly at this time. Up to the 19th August, 1793, 189 Danish vessels had been seized, and the compensation promised them for provisions was only very reluctantly paid, and after much delay. In vain Count Bernstorff attempted, in his celebrated memorial, to show to the Cabinet of St. James, that the neutral Powers had nothing to do with the peculiar character of the war, and that, according to the principles of independence, they ought to enjoy undisturbed the advantages of commerce, in the midst of the conflict. To this the English Government replied that France had placed herself out of the pale of civilization; that no Power could be considered neutral with reference to her; and that all nations were bound to take part against her.<sup>4</sup>

Having exhausted in conference all power of persuasion, Denmark

<sup>1</sup>Martens, *Recueil*, vol. 5, pp. 439, 473, 483, 487.

<sup>2</sup>See Hautefeuille, vol. 3, pp. 276 *et seq.*

<sup>3</sup>Martens, *Recueil*, vol. 5, pp. 596-605. Besides the Orders in Council of the 8th June and 6th Nov. 1793, according to which England extended the right of preemption to all neutrals, and made lawful prize the produce of French colonies, privateers received also secret instructions very oppressive to general commerce. See Comte de Garden, vol. 6, pp. 324, 330.

<sup>4</sup>See the diplomatic papers on this subject in Martens' *Causes célèbres*, vol. 2, pp. 333-63; *Recueil*, vol. 5, pp. 569, 593.

proceeded to arm her fleet, and concluded with Sweden an alliance for the protection of commerce (1794).<sup>1</sup> About the same time the conduct of England provoked the resentment of the United States of America. Jefferson, the then Secretary for Foreign Affairs, resisted energetically the violence of the privateers, and protested that the sale of agricultural produce was always considered free; that the belligerents were not entitled to extend the catalogue of contraband on their own authority, and added that the submission to that authority would amount to the surrendering into the hands of one nation the commerce of the world. Yielding to these remonstrances England consented to the appointment of a mixed commission, to examine the claims of American subjects to compensation; as to the exertions of the United States in favor of the immunity of the neutral flag, they remained unsuccessful. By the treaty of 1794 both Powers reverted to the principles of the *Consolato del Mare*, and extended the catalogue of contraband to some articles *ambigui usus*.<sup>2</sup>

Having made such concessions to the Cabinet of St. James, the United States had no right to expect that any greater regard should be shown to their flag by the other belligerents; in fact, even before the conclusion of the treaty to which we have alluded, France had complained that the Americans permitted the English to seize and condemn as lawful prize the merchandise of their own subjects; but when the news that the treaty of 1794 was signed reached Paris, the French Government immediately had recourse to reprisals, and adopted on their side towards the Americans the principles of the *Consolato del Mare* (Decree, March 2, 1796). In justification of which measures the Directory alleged the following reasons 1. According to the treaty of 1778, between France and the United States, it was laid down that all privileges granted by one of the contracting Parties in favor of a third Power should belong to the other Party. 2. That it would be unreasonable to expect them to observe the immunity of the flag with respect to those nations who renounce it of their own accord. After this decree the Cabinet of Washington lost no time in breaking off commercial relations with France.<sup>3</sup>

<sup>1</sup>*Post*, p. 440.

<sup>2</sup>*Post*, p. 443; Wheaton, *Histoire*, vol. 2, pp. 39-47.

<sup>3</sup>*Ibid.*, pp. 50, 51; Martens, *Recueil*, vol. 7, p. 376. Friendly intercourse between France and the United States was reestablished by the *Morfontaine Treaty* in the year 1800. *Ibid.*, p. 484. By this convention both parties reverted to the former liberal principles of neutrality, and the immunity of the neutral flag was again acknowledged.

Thus the example of one belligerent acted upon the other, and the old system of the *Consolato del Mare* took the place of more liberal principles of neutral commerce. The obstinacy of the belligerents increased every year, and to all the terrors of unbridled privateering was added oppressive procedure in the prize courts. While Marriott, in England, was inclined to support all the abuses of belligerents,<sup>1</sup> the French Government referred cases, relating to maritime prizes, to the ordinary courts of law; and even conferred a prize jurisdiction on their consuls in neutral ports. The partiality of these new judges reached its greatest height at the end of the 18th century; they called upon neutral ships to produce all papers required by the French regulations, without paying any attention to the difference of European laws in that respect, and considered every ship, which had once belonged to the enemy, lawful prize, though she had afterwards been transferred to a neutral by a regular bill of sale.<sup>2</sup>

In the year 1798 the Directory published two new decrees, unprecedented in history; one of them shortened prize proceedings to such a degree that there was not time enough for neutrals to bring forward their evidence; the other introduced a rule, whereby the character of the ship was to be determined by the cargo, that is, it declared lawful prize all neutral ships in which were found any article of English manufacture.<sup>3</sup> By the introduction of these decrees, international trade ceased

<sup>1</sup>This judge was the great opponent of neutral commerce; he did not consider the English customs sufficiently severe in checking it, and laid down in the year 1794 an extraordinary rule, according to which neutral nations were only permitted to carry their own produce, and not that of other countries. Jacobsen, *Seerecht*, i, preface. Marriott defended this arbitrary limitation of trade with the enemy, on the principles of the Navigation Act, which was then adopted by many states in imitation of England.

<sup>2</sup>Several French jurists then, and afterwards some members of the Directory itself, protested against this unusual change introduced into prize practice (*Lebeau*, vol 4, pp. 345, 403-415.) Portalis justly says, "C'était une grande erreur d'avoir attribué la connaissance des prises aux tribunaux ordinaires. Quand il s'agit de la justice des nations entre elles; quand il s'agit des droits de la guerre et de leur exécution; quand il faut peser les traités, décider si une nation est amie ou neutre, on est étonné sans doute de voir intervenir une autre autorité que celle du gouvernement." According to the custom of all governments prize jurisdiction belongs to special courts, established for the purpose Pritchard, *Digest*, vol. 3, pp. 163, 412; Wildman, *Institutes*, vol. 2, pp. 163, 361. The appointment of prize judges in neutral ports was also an anomaly contrary to international law; besides, the consuls, to whom the Directory gave jurisdiction in these cases, were, according to Busch, often part owners of the privateering vessels, and were consequently interested in the condemnation of the neutral merchant Busch, *Das Bestreben der Völker*, S. 393.

<sup>3</sup>See Comte de Garden, vol. 6, pp. 335-337; Robinson, vi. Coll. 33, note. Busch, 332-336, 394-411; Jacobsen, *Seerecht*, 69; Martens, *Recueil*, vol. 6, p. 398. In a

to have free course; visitation degenerated into abusive search, and privateers became pirates. In answer to the question of neutral merchants, what was to be considered war contraband? the French privateers replied, "all that is worth seizing" (*tout ce qui vaut la peine d'être pris*).

It appears, then, that the principles of the "armed neutrality" were abandoned during these revolutionary wars. In fact, the United States of America, on the conclusion of a new treaty with Prussia in the year 1799, even proposed to abolish the immunity of the flag; or, at least, to postpone its acknowledgment to a more favorable time.<sup>1</sup> Only Denmark and Sweden adhered to the traditions of their policy, and, in order to protect their commerce, resumed the practice of making use of convoy. This proceeding was resisted on the part of Great Britain, and, in a short time, produced a violent collision.<sup>2</sup> Both the neutral Powers were already on the point of yielding to the English Government, when they found an energetic supporter in the Emperor Paul I. Having been disgusted with the violent conduct of the belligerents, he published, August 15, 1800, a declaration for the purpose of re-establishing an armed neutrality; and, finding Denmark, Sweden and Prussia favorable to his views, signed, in conjunction with them, on the 4/16 December, 1800, the memorable convention, in which, in addition to the principles of the Empress Catherine II, there were laid down the following rules, as being in conformity with international law.

1. Blockade is only reputed to be broken by neutrals when, disregarding the warning of the belligerent, they enter the blockaded port by force or fraud. 2. Neutrals under convoy are free from visitation; the declaration of the officer in command of the convoy to be considered sufficient.<sup>3</sup>

Unfortunately the second armed neutrality was not so successful as

very short time after the publication of these decrees there were confiscated more than 300 neutral vessels, so that merchants did not dare to undertake a voyage, excepting under the protection of convoy.

<sup>1</sup>Wheaton, *Histoire*, vol. 2, pp. 55-76; Martens, *Supplément*, vol. 2, p. 227. However the right of preemption of war contraband was confirmed in the new treaty. It includes, also some liberal interpretations of prize law. See articles 14, 16, 21, 23.

<sup>2</sup>Martens, *Erzählungen*, vol. 1, pp. 229, 302; 2, pp. 39-58; Wheaton, *Histoire*, vol. 2, pp. 76-83.

<sup>3</sup>For the acts relating to the second armed neutrality, see Martens, *Supplément*, vol. 2, pp. 344-486; and Baron Carl Martens, *Neuvelles causes célèbres*, Leipzig 1843, vol. 2, pp. 176-272; see also Miloutine, *History of War of 1799*, a work of the present Russian Secretary of War at St. Petersburg, published in the Russian language. He also enters into the history of the second armed neutrality.

might have been expected. The northern coalition did not last long, and was put an end to by the bombardment of Copenhagen and the death of the Emperor Paul.<sup>1</sup>

On the succession of Alexander I to the throne of Russia new prospects of peace opened to the world. He proposed to the Cabinet of St. James to hold a conference, which should lay down the fundamental principles of neutral commerce; he also promised to invite the Danish and Swedish Governments to accede to them, and, in fact, on the 5/17 June, 1801, there was signed between Russia and England a new convention, in which both parties made some important mutual concessions; the greater part however of the regulations of the armed neutrality, such as the definition of war contraband and the free access of neutral merchants to the ports of the belligerent, remained unaltered. With respect to colonial trade, European merchants were placed on an equal footing with the subjects of the United States of America, that is, obtained the right to import from the enemy's colonies goods for their own use. But the change in the definition of blockade, though dependent on one word (*or* instead of *and*), seemed to be more important.<sup>2</sup> Ships under convoy were only exempted from the visitation of privateers. The principle that the flag covers the cargo (*le pavillon couvre la cargaison*) was also rescinded on the condition that enemy produce and manufactures (*marchandises du crû ou de fabrique de l'ennemi*), purchased by neutral subjects and laden as their own property, should be free. As additional articles to the convention some clauses relating to irregularities and defects in prize practice were introduced. 1. The contracting Parties gave diplomatic agents the right of protesting against unjust decisions, and of bringing the case before the highest court of appeal. 2. Without the consent of the admiralty judge it was forbidden to unlade and sell the property in dispute prior to its being adjudged lawful prize. 3. If a ship were arrested without sufficient cause it was stipulated that for every day's delay compensation should be paid by the privateer.<sup>3</sup>

<sup>1</sup>Of treaties concluded under the second armed neutrality we can only refer to that between Russia and Sweden, 1st March, 1801. Martens, *Supplément*, vol. 2, p. 307.

<sup>2</sup>Lord Grenville himself says in his speech that in the armed neutrality it was required that blockading ships should be in sufficient number, "*and stand near the port*;" on the contrary, in the convention of 1801 this *and* was changed into *or*. Lord Grenville seems to attach much importance to this alteration, and to the manner in which the treaty was drawn up. V. Subst. of Speech, Nov. 12, 1801, pp. 82-3, London, 1802.

<sup>3</sup>The convention of 1801 is inserted in Martens.

In the following year the St. Petersburg convention was after some hesitation accepted by Sweden and Denmark, but they gained little advantage by this vacillating policy, as Great Britain paid no attention to the observance of the provisos she had entered into, and finding the convention too unfavorable to her interests used every effort to interpret it according to her own views.<sup>1</sup> Sweden soon afterwards, yielding to the demands of the Cabinet of St. James, signed a new convention with England in 1803, wherein the catalogue of war contraband was considerably enlarged.<sup>2</sup>

**KLEEN:** *Lois et Usages de la Neutralité.* Paris, 1898.

Rikard Kleen. Contemporary Scandinavian publicist; born in 1841; studied at the University of Upsala; attaché of the ministry of justice in 1863; attaché of the legation of Sweden and Norway at Turin, and later at Florence; chief of division of ministry of foreign affairs at Stockholm; secretary of legation at Vienna; member of the Institute of International Law; member of the International Sanitary Conference at Vienna. His publications include *Neutralitetens Lagar*, 2 volumes, 1889-91, *Krigets historia ur folkrättslig synpunkt*, 1906, *Kodificerad handbok i krigets lagar*, 1909, and *Kodificerad framställning i mellanfolkelig Rätt*, 1917.

<sup>1</sup>See a curious pamphlet by Jacobsen, *Versuch eines Commentars zu den Russischen Beschwerden über die Beeinträchtigung des Russischen Handels durch England*. Altoona, 1808. In illustration of the manner in which England interpreted the convention of 1801, we quote from this work the following facts. When the members of the opposition, Lords Grenville and Howick, observed in Parliament that the convention abandoned the colonial and coasting trade to neutrals, the Minister, Lord Sidmouth, answered, that this was not evident from the words of the treaty, and that the contracting Parties might enter into a new arrangement about it. As little foundation was there for the statement of the English Ministry, that the neutral Powers had shown their confidence in the impartiality of the British Admiralty Court, by declining to insist upon any conditions in favor of their own subjects; this is indeed refuted by the supplementary articles of the treaty. Sir William Scott also asserted that the convention was only applicable to Russian ships, and not to Russian produce found on board neutral ships. In that case he followed the precedents of English practice; according to this interpretation, hemp, masts and some other articles, which according to the treaty were not reputed to be contraband, were pronounced by the English judge to be lawful prize, and that even in those cases in which the legality of the neutral commerce did not admit of doubt. Complaints were also made of delay in the proceedings, and that cases which might have been disposed of in six months were protracted by the court for two or three years.

<sup>2</sup>*Post*, p. 620.

*Volume 1, page 20.*—In reference to the question of neutrality the year 1780 ushered in a new era which may be regarded as the close of the reign of the *Consolato del Mare*. It was a period of transition to the new maritime law introduced by the Paris Congress of 1856. This period is characterized by the endeavors of the States at peace to put an end to the uncertainty regarding the rights and the duties of neutrals, to fill in the gaps of the regulation of these rights and duties and to form a union for the purpose of opposing the arbitrary way in which the greatest maritime Power was treating the neutral nations. It was at this time that there manifested itself that remarkable movement against the oppression of a despotic marine, a movement whose initiative was due to the alliance of the northern Powers, but which was also strongly supported by the insurrection of the great transatlantic colonies against British domination. The American War of Independence was a struggle like unto that of the Baltic countries against their common oppressor. The colonies were forced, by reason of the identity of interest and feelings, to take sides with the neutrals against England.

During the North American War of Independence, discontent awakened by the exacting pretensions of the great maritime Powers, burst out at last, and the general sentiments of insecurity produced a violent reaction. The less powerful States realized that they had to form a union, and to be the better able to oppose abuses, the first condition was to reach an understanding with regard to the essential points. As a result there was formed in 1780 the famous so-called "armed neutrality" between Russia, Sweden and Denmark, whose object it was not merely to determine the just and reasonable principles of neutrality and to rally round them all other Governments, but to defend also by armed force any attack upon their rights.

The Russian Government which was joined in this force by the Scandinavian States, formulated the new rules. These rules were part of a declaration which on February 28, 1780, was transmitted by the St. Petersburg Ministry, in the first place to the great western maritime Powers, England, France and Spain, and later to the rest. The following five points appeared therein as the future principles of neutrality:

1. Neutral vessels may freely navigate from port to port and along the coasts belonging to the belligerent States without being detained on their course;



2. Enemy merchandise is free under the neutral flag, excepting war contraband;

3. To determine what shall be regarded as war contraband, reference is made to Articles 10 and 11 of the treaty concluded on June 20, 1766, between Russia and England, which treaty shall have obligatory force with regard to all the belligerents;<sup>1</sup>

4. No port shall be regarded as blockaded so long as there is no real and effective danger in entering the same, that is to say, so long as it is not surrounded, by the Power which pretends to forbid entrance to it, by means of stationary and sufficiently nearby vessels;<sup>2</sup>

5. These principles are to serve as rules in the procedures and decisions of the prize tribunals.<sup>3</sup>

As may be judged from this, the declaration does not in its integrality and in clear terms establish the principles set down in the Utrecht treaty that the quality of the vessel determines the quality of the cargo. To the second proposition that "enemy merchandise is free under neutral flag" there is not joined the correlative disposition that "neutral merchandise is seizable under enemy flag." This was also the first time that these two propositions which hitherto had usually been joined, were no longer found side by side. On the other hand, as nothing expresses the intention of separating them, it was concluded that the armed neutrality probably meant purely and simply to renew the Utrecht principle in this regard. There is no lack of good reasons in support of this interpretation. It is a fact that at the time the armed neutrality was established, the general practice on the seas was to leave property free when under the neutral flag, with the reservation of the right to seize in the contrary case neutral property under enemy flag. But, if it had been the intention of doing away with this last-mentioned right, though its presumed condition was given form of law, mere reflection would have required an explicit stipulation upon this point. Moreover, peace treaties and other remarkable conventions that have been concluded since 1780 contain

<sup>1</sup>The contraband articles specified in this treaty are almost all (excepting saltpeter, sulphur, saddles and bridles) of such a nature as fits them specially to war use. The list marks therefore a step in advance. It was furthermore agreed that when a neutral vessel was transporting such articles, such quantity of war ammunition as was deemed necessary for the needs of the vessel itself should be regarded as free and exempt from confiscation.

<sup>2</sup>This rule was a protest against fictitious blockades.

<sup>3</sup>An additional article declares that the Baltic Sea was to be regarded as closed waters within which acts of hostility were forbidden.

anew the two propositions side by side, in exact conformity with the Utrecht rule.

The declaration was transmitted to the neutral Governments with the invitation that they adhere thereto. This was done successively—apart from Sweden and Denmark which belonged to the original alliance—by Holland, Prussia, Austria, Portugal, the Two Sicilies, and lastly by France, Spain and the United States of America. The contracting Powers have all accepted the principles of armed neutrality with the obligation not merely to observe and respect these principles, but also to equip and maintain a fleet to uphold and defend them by acting in concert and in common. Furthermore, within this more enlarged league, Russia, Sweden and Denmark formed together a more intimate union under the name of "Allies of the armed neutrality." These three Powers agreed to defend their cause in common and jointly, so that an attack directed against any one of them through some violation of the right of neutrals would bring simultaneously the other two to its defense.

As could be foreseen, England alone refused her adhesion to this act which was intended to open up a new phase in the regulation of neutrality by establishing principles that should gradually decrease the exclusive domination of the greatest maritime Power. The British Ministry explained its refusal on the ground of political maxims which it had hitherto constantly followed, and upon its conventions which, as regards treatment on the seas on the part of the British marine, granted to certain privileged States immunities which the other States did not enjoy. And to these latter England would for nothing in the world concede the advantage that the neutral flag should protect enemy property.

England alone was however not capable of halting the current of ideas of a neutrality more in conformity with right, ideas upheld by many other nations and even by the new opinion which already began to appear everywhere on the horizon. The modern spirit demanded an international, a distributive and equal justice for all the States, and simplicity, frankness, and clarity in the laws. The principles proposed by the armed neutrality had no other object in view than that of substituting fixed rules in the place of momentary arbitrariness, an objective justice in the place of the whim of the stronger, the precepts of natural law in the place of the shrewdness of an ambitious policy, and at least a relative security for peaceful navigation in the place of

maritime brigandage. In the presence of these irrefutable facts, and in the face of the unity and harmony between the States favorable to this reform, the British Government, while avoiding a real adhesion thereto, was nevertheless compelled to practise a little more moderation in the application of its former rigorous usages. It protested in vague terms, especially against the maxim "the flag protects the merchandise." But it made more than one exception in its favor; it issued instructions to its cruisers enjoining them to proceed with greater prudence toward the neutrals, and to the latter it opened the commerce of the Mediterranean.

The principles of the "armed neutrality" acquired in this manner, if not an exclusive and absolute, at least a decisive, influence over the interpretation of the rights and duties of neutrals during the following period which extended up to the time of the Crimean War. Not all, of course, had been gained by the declaration of 1780. It provided no protection for neutral property under the enemy flag and did not restrict the right of search. But it put an end to a state of incertitude, of insecurity, and of confusion which, for lack of precise laws accepted by the majority of the States, had controlled ever since the time of the *Consolato del Mare*. Every nation had followed its own special rule, according to the intention of the moment: no rule had been established on juridical bases as a result of serious negotiations between a considerable number of Governments. Though incomplete and defective, the principles of the "armed neutrality" were at least formulated in an exact manner and had been recognized and adopted by almost all the Powers of Europe and of America. Faithfully they expressed the reasons of an international conscience; the motive forces back of them were peace and justice. And lastly, they restricted the pretensions of a single Power of exercising a universal dictatorship unaccompanied by legal sanction and exclusively based upon might. The accord and harmony between the other States, their understanding officially declared and clearly expressed, their demands based upon equity and humanity presented a reassuring guarantee theretofore unknown. It is true that its application could only be of a restricted kind in view of the fact that no serious conflict arising from the divergence of views between England and the States of the league gave to the latter, during the period in question, the opportunity of setting forth the practical consequences of the declaration. The great significance of the diplomatic act of the year 1780 is rather to be found in the fact

that it constitutes a principle and sets forth the expression of a new and more enlightened spirit. Attention had been attracted to the need of a more effective general protection of the right of neutrality, and also to the powerful aid which the reformation of this right could find in the public opinion of the civilized world, because almost all the nations had shown themselves ready to defend more energetically than ever before the interests of the neutrals. After this solemn and collective declaration it was felt everywhere that soon there would rule a better legislation over the conditions in the countries not engaged in war while war was being waged elsewhere, and that the world was on the eve of a new and more liberal solution of the so important questions of the protection of the neutrals against the encroachments of the belligerents. The time of the great reformation in the matter of neutrality may therefore be regarded as having begun with the declaration of 1780, even though the reform itself was to await for some time its subsequent development, and though it had to suffer from the interruptions brought about as the result of abnormal circumstances.

One of these interruptions, the most deplorable and the most violent, which threw Europe once more into a state of anarchy which one had been entitled to believe had long since disappeared, was the result of the wars of the great revolution which broke out soon afterward. The violations of the law of neutrality and the abuses of the laws of war reached then such a stage that it would hardly have been possible to maintain the modest reform which had been introduced, and even less to continue to develop the same. France and England surpassed one another in reactionary manifestoes addressed to the rest of Europe concerning the situation of the neutrals, and the arbitrary decrees of the belligerents reduced these to a state of almost illimited dependency. Each of the two western rivals claimed the right to close the entire continent to its adversary. The principles not only of armed neutrality, but of almost the entire law of neutrality hitherto known and accepted, were disregarded and trampled underfoot. One of the first consequences of this violent reaction was the fact that England could again apply her antiquated principles and compel the weaker States to tolerate them, as long as they were not prevented in this by the terrorism from the opposite side. The rule that the flag protects the merchandise was in fact abolished and as the neutrals could no longer act in common accord,—some being dominated by the conqueror, and others hesitating as to the decision they should take in the face of such overwhelming

evidence, while still others were compelled to conclude treaties with England in order to be able to resist the threats of France,—the bond which had held together the members of the league of 1780 was broken, and the union which had made for the unity and the success of other reformatory labors was sundered. They deserted, one after the other, or they avoided coming to a decision; at all events, they did not endeavor to realize their promise to “defend the right of the neutrals by armed force.”

Even at the last moment, when war broke out between revolutionary France and the allied Powers, the Scandinavian States tried to strengthen the bonds by uniting on the basis of the compact of 1780. But Russia failed in this instance for she felt compelled to accede to the coalition of which England was the soul. And in fear of dividing the forces that were to be opposed to France, the other members of the league of 1780 dared not stand apart from England. Every legal scruple was put aside in the presence of the pretended political necessity of crushing, or at least of throwing back republican France, which was regarded as dangerous for the peace of Europe. It soon became a fashionable tactic in the policy of sea dictatorship to excuse every violation of the right of neutrals with the pretext that at any price, even at the price of justice and of equity in international relations, it was necessary to prevent the domination of the French Republic. On the other hand, the French Republic put forth analogous pretexts to checkmate British preponderance through violations of the law of neutrality.

Even at the time of the National Convention, the leading Powers of the coalition, especially England, had tried to force the Scandinavian States to adopt with regard to France a procedure similar to others, and to prevent their commerce with French ports. They forbade the neutrals to transport thither, not only articles of war contraband, but even articles of prime necessity, such as wheat, food and other like produce. English privateers seized the vessels which carried on the transportation of such articles to France. Fictitious blockades were declared, and vessels which did not observe them were captured. Those vessels bringing produce from the French colonies were likewise declared legitimate prize. Further than that, and independently of its nationality and cargo, England declared legitimate prize any vessel sailing to or from a French port. France, on the other hand, threatened by famine, resorted to violent reprisals. In 1793 she repudiated the

principles of 1780 by reestablishing the ancient prize rules which had prevailed before the reign of Louis XV. In virtue of the decrees of the National Convention French privateers captured not only enemy property under the neutral flag, but even any vessel transporting merchandise of English manufacture or belonging to the enemy, or necessities of life belonging to neutrals but destined for the enemy. According to a law of 1798, the neutral vessel was not to be treated according to the flag she flew but according to her cargo, and in consequence was to be captured if she transported enemy property, and thus especially any object coming from England or from the English colonies was to be regarded as enemy property.

Fortunately, these reciprocal violations of the law of neutrality lasted not longer than the burst of passions loosened by the wars of the Revolution. A proof, moreover, that the oppressed law had never ceased to enjoy a certain degree of respect within the innermost of the consciences and that these continued to uphold the fundamental principles, in spite of the abuses and of the accidental transgressions of this time in almost the whole of Europe, is found in the fact that since the encroachments upon the rights of the neutrals began under the National Convention, the allied Powers deemed it necessary to lay before the neutral States which still insisted upon their rights, such as the United States of America, and the Scandinavian States in Europe, excuses with regard to the irregularities that had been committed, by alleging "the exceptional situation" created by the events which took place in France and which were of an essentially transitory nature. England went so far as to mitigate some of her measures of violence, by according exceptional immunities to certain neutral States which desired to remain at peace.<sup>1</sup>

The compact of 1780 was broken and its principles no longer observed, since Russia had become the ally of England and in consequence had been compelled to abandon the new laws, so embarrassing to a maritime supremacy. Hence, when a few years later, the Russian Government again separated from England and her allies, and recovered its freedom of action, its first thought was to reconstruct the armed neutrality. The alliance between Russia, Sweden and Denmark was therefore renewed in December 16, 1800, in the name of "second

<sup>1</sup>Instructions issued in 1793 to English cruisers forbid the latter to seize Scandinavian vessels for violations of the Blockade, unless in spite of the warning given them, they had again tried to enter the blockaded region.

armed neutrality"; and Prussia adhered to it. They returned to the principles of 1780. These principles were not merely reestablished but considerably extended and increased in a liberal and equitable sense. To the five points of the first armed neutrality, the following two were added:

1. A neutral vessel is not guilty of violating the blockade until it has been warned by a war-ship or by a corsair of the blockading Power and it attempts nevertheless to run the blockade either by ruse or by force.

2. When neutral merchant ships are escorted by a neutral war-ship, they may not be searched, and the declaration of the officer in command of the convoy that there is no war contraband on board shall be deemed sufficient.

The British Ministry neglected no effort to break this new bond of neutrality, or at least to annul its consequences, and it was successful. After long negotiations, it again brought about the separation of Russia from her allies; and on June 17, 1801, it concluded with the St. Petersburg Ministry a convention by which the Russian Government again abandoned the essential and most important principles of the compacts of 1780 and 1800, especially the one in virtue of which the neutral flag was to protect the enemy merchandise, but England was also forced to make some concessions; so that the armed neutrality, without which these concessions could not have been obtained, has not been wholly unfruitful. The Scandinavian States forsaken by Russia and remaining isolated and no longer able to maintain their resistance, felt compelled to accede to the Anglo-Russian convention (1801-1802). Prussia alone absolutely refused her aid to this recantation of principles solemnly published. But England made wide use of her triumph to induce several other States, one after another, to conclude with her special conventions on the basis of the principles of 1801, which principles, in consequence, became soon afterwards predominant. It may be said that they have been the law of a large part of Europe during the first half of our century, that is to say, in a general way for England and for those which had contracted with her, but also for other States during a certain period and as long as they did not depart therefrom, until at the time of the Crimean War, the legislation upon this matter was again enlarged. The rules of 1801 deserve therefore a mention, although secondary in importance beside those of 1780. They may be summarized in the following articles:

1. Neutral vessels may freely sail to the ports and along the coasts of the belligerent nations.

2. Merchandise on board these vessels is free excepting the so-called war contraband, and merchandise belonging to the enemy; merchandise of enemy origin but purchased and transported by a neutral must in all cases enjoy the benefits acquired by the neutral flag.

3. To remove all doubt as to the nature of articles which constitute war contraband, the contracting Parties refer to the treaty of commerce concluded between them on February 21, 1797.<sup>1</sup>

4. A port is regarded as blockaded only in case its entrance offers real danger by reason of the number of war-ships directed to inhibit access to it.

5. Legal action against neutral vessels seized because of founded suspicions or of evidently guilty acts must be taken without delay, and the mode of procedure of this action shall be uniform and strictly legal.

Regarding the search of convoyed vessels, the stipulations of the convention may be summed up as follows:

1. The right of searching merchant ships, owned by subjects of one of the contracting Powers and sailing under the escort of a war vessel of their nation, belongs exclusively to the vessels of like rank of the belligerent State and may not be exercised by corsairs.

2. Owners of vessels intending to sail in convoy under the escort of a war vessel must, before being given their ship's papers, present to the chief of the convoy their passports and their sea certificates in the form determined by the treaty.

3. When a convoy is met by a war vessel of the belligerent Parties, the latter, unless weather conditions or circumstances prevent, must hold herself beyond cannon range and send a longboat to the conveying vessel to proceed in common to the examination of the papers and certificates showing that the one is authorized to escort such or such vessels with this or that cargo from port A to port B, and that the other really belongs to the royal (imperial) marine of the nation whose flag she flies.

4. Once the regularity of the papers is established, any legitimate suspicion must be regarded as removed. In the contrary case, and

<sup>1</sup>According to this treaty articles of contraband were approximately limited to those which had been specified in the previous treaty between the same parties of June 20, 1766 (see *ante*, page 134), that is to say, with few exceptions, to those articles *especially* adapted to war uses. This point constitutes therefore a concession of the neutrals *Post*, p. 445.



after having been properly and duly requested thereto by the belligerent, the chief of the convoy must stop long enough to permit searching the convoyed vessels.

If after examination of the documents the searcher believes that he has good reasons to detain one or several convoyed vessels, Article 5 authorizes him to hand the captain and crew to the chief of the escort who, on his part, may put on board the detained vessels an officer to assist in the investigation, which must take place, without delay, in the nearest port of the belligerent, in the presence of the seized vessel. Article 6 forbids the chief of the convoy to oppose by force of arms any acts ordered by the belligerent commander. If, on the other hand, the latter abuses the power thus conferred upon him, or detains a vessel without sufficient reason, the offended owners of the vessel or cargo must be indemnified.

As appears from this summary, the 1801 convention, which evidently sought to conciliate England's pretensions and the needs of the union of the North, deviated widely from the principles of the second armed neutrality; and England's pretensions won the day on all principal matters. According to the convention enemy property under neutral flag could again be captured. A violation of the blockade made it no longer a condition that the line be passed *through ruse or through force* after *previous warning* had been given by a vessel of the blockading Power of the state of blockade in the very place of the operation—a condition which would have guaranteed an effective blockade; nor was the *fixed stationing* of the blockading vessels prescribed. Finally, the search of convoyed merchant ships was permitted. Now, these three points which had been the main matter of England's pretensions and because of which England had protested against the treaty of the armed neutrality, constituted so many retrograde steps in the regulation of the rights of neutrals; and they carried with them the abrogation of the essentials of the liberal principles proclaimed by the league of 1780–1800, to wit: *The inviolability of the neutral flag, the effective quality of blockades, and the abolition of the search of convoys.*

On the other hand, the convention of 1801 contained, no doubt, besides these restrictions, various other provisions favorable to neutrality. It stipulated explicitly the freedom of traffic between the open ports of a belligerent and a neutral, and removed the unjust prohibitions to any commerce with the enemy which were so frequently decreed during the wars of the Revolution. It also limited in a reasonable way

the idea of war contraband. And finally, to make the blockade legal, it required a certain number of war vessels which, though the number thereof was left to the subjective appreciation of the belligerents, was nevertheless calculated to exclude purely fictitious blockades. In principle the latter were at least disapproved of.

Thanks to these rather liberal provisions, the convention might have been regarded as a slight step in advance toward the development of neutrality, *if* it had been loyally executed and scrupulously applied. It was certainly the first international act of general interest through which England modified somewhat her ancient pretensions of dictatorship without any regard whatever for the opinions of the other nations. For the first time, the British Government made important concessions to the neutrals; she bound herself by explicitly clear conventional dispositions and to a certain degree broke with her traditional system, followed by all her ministries, of avoiding precise stipulations in order to avail herself of the obscurity and ambiguity of expressions according to her purposes which varied with circumstances, and in order to be able to apply the rules more rigidly with respect to some nations and more considerately with respect to others. It is true that the convention was far behind the armed neutrality with regard to the protection of the right of the neutrals. Nevertheless, it offered at least the advantage, not only of constituting a compact between two adverse parties which theretofore had not been able to reach an understanding, but even of binding by definite laws the greatest maritime Power which theretofore had not allowed herself to be bound by anything.

Unfortunately, this advantage of the convention was considerably reduced by the fact that, in large part, it remained a dead letter. England realized ere long that she had granted too much, while the neutrals thought that she had granted too little. Their right had indeed been sacrificed to her. Both parties were dissatisfied with the new order of things, and by all means available they sought to liberate themselves. Ere long, the opportunity to do so presented itself.

**DE LOUTER:** *Het Stellig Volkenrecht.* The Hague, 1910.

J. de Louter. Contemporary Dutch publicist; born in 1847; doctor of law of Utrecht University; practising lawyer at Amersfoort; professor of public law at

the University of Amsterdam, and of public international law at the University of Utrecht; member of the Institute of International Law.

Mr. de Louter has contributed many articles to law reviews, notably on the subject of international law, and is the author of a work on the political and administrative law of the Dutch Indies entitled *Staats-en Administratief Recht van Nederlandsch-Indië* (fifth edition, The Hague, 1904), which has long been pronounced the best treatise on the subject.

*Volume 2, page 374.*—In the course of the eighteenth century, England had acquired an undisputed supremacy on the seas and as one of the results she disregarded with proportionate arrogance all the rights of the neutrals. She not only feared not to subject ships under the neutral flag to an unlimited right of search, even though the foreign merchant ships were under the escort of a convoy of war-ships of their own State, but in the Seven Years' War which brought her sea power to its zenith, she even declared that neutral ships to which the enemy had granted the privilege of carrying on trade with her colonies during the time of the war, would be regarded as enemy ships and therefore were to be seized unreservedly and declared legitimate prizes. Hübner entered the lists against these pretensions with the statement that the neutrals also possessed rights which had to be respected by the belligerents. This statement marks indeed a second period in the history of neutrality.

In the meantime it had become increasingly necessary to bring England to reason. The rebellion of the American colonies followed by the war with France, Spain and the United Netherlands gave rise to new motives for molesting neutrals. Russia resisted these vexations. During the reign of the energetic Empress Catherine II, Russia had concluded in 1780 with Sweden and Denmark an alliance under the name of *armed neutrality*, which had for its object to defend the rights and the interests of the neutrals, if need be, by armed forces. The declaration of February 28, 1780, contained the following principles which should thenceforth constitute the basis of maritime neutrality: (a) neutral ships may freely sail to the ports and along the coasts of the belligerents, inclusive of their colonies; (b) enemy merchandise is safe under the neutral flag, with the exception of war contraband;<sup>1</sup> (c) the question as to what constitutes contra-

<sup>1</sup>Kleen, *Lois et usages*, vol. 1, p. 22, assumes that the reverse of this is tacitly agreed to, and the so-called Utrecht rule of 1713 is thus accepted. A comparison with the declaration of 1856 makes this interpretation admissible.

band is defined by Articles 10 and 11 of the treaty of June 20, 1766, between Russia and England, which were thenceforth obligatory upon all belligerents: these articles indicated only goods exclusively serviceable for war operations, and in addition saltpeter, sulphur, saddles and bridles; (d) a port is regarded as blockaded only when there is an actual and real danger in entering therein; and this can be so only in case the blockading ships are stationary and in close touch with one another; (e) the authorities of the prize courts are to observe these principles.

The declaration of 1780 was submitted to all the neutral States of Europe and accepted by them; France, Spain and the United States also accepted its principles soon thereafter. England alone refused and resisted and was soon supported by the coalition-wars following the French Revolution when Russia renounced her viewpoint and the ancient abuses were revived. In union with Sweden, Denmark and Prussia, Russia again tried in 1800 to establish a *second armed neutrality*, but did not succeed. To the aforementioned principles she had added two more, namely: (f) a breach of the blockade is presumed only in case the guilty ship had been warned beforehand; (g) in the case of a convoy, search is to be stayed upon the declaration of the commander that there is no contraband on board. In the meantime England again succeeded in swerving Russia from the principles of 1780 and 1800, and on June 17, 1801, she concluded with the new Emperor Alexander I a treaty which contained important deviations from the said principles, but to which most of the States were nevertheless compelled to accede. In the matter of war contraband, enemy merchandise under the neutral flag was again declared legitimate prize. The conditions of a lawful blockade were considerably weakened. By observing a few formalities, ships under convoy could also be searched by the war-ships of the belligerents. Still, a few of the principles were retained, among others the free commerce of neutrals with the belligerents, the definition of contraband, and the condemnation of the fictitious blockade. But even these elements of a growing law were temporarily lost sight of in the maelstrom of the Napoleonic wars. During the titanic struggle between England and France which ere long subjected the whole Continent of Europe to the will of Napoleon, the neutrals disappear for the most part from the stage and the rights of the remaining few are trampled under foot. Through fictitious blockades along extended coasts, even of all the

British Isles, the grim adversaries sought to destroy each other's commerce. They vied with each other in arbitrary and unrestricted prohibitory laws and threats. Neutral ships which ventured to trade with the enemy were declared forfeited together with their cargoes. This frenzy reached its highest point in the imperial decree issued at Fontainebleau, October 16, 1810, which ordered that all British merchandise found in France or in countries of her allies should be destroyed by fire.

But the United States was able after the recognition of its independence to rescue the rights of neutrals from the general violation of right. Inclination and interest brought it to the side of the neutrals in their resistance against the belligerents. Already in 1793 it had vigorously protested against the attempts of its old French ally to misuse American territory, and had emphatically forbidden France to recruit soldiers within its territory and to equip war-ships or corsairs in the interest of one of the belligerents. Impartiality was the duty of neutrality and could not but lead to a strict refraining from any favor or prejudice to parties. Numerous treaties with European Powers sought to secure a wider observance of these and similar principles, among others, the inviolability of the neutral flag and even the abolition of privateering.<sup>1</sup> Meanwhile the United States had not become powerful enough to enter the lists with the all-powerful Great Britain; by the non-intercourse act of May 10, 1810, it broke off all commercial relations with both belligerents; but in the war with England of 1812 it was forced to moderate its claims and to surrender them in part. Nevertheless, the influence of the United States upon the development of the law of neutrality has remained great and durable.

**MANNING:** *Commentaries on the Law of Nations.* London, 1839.

William Oke Manning. English publicist; born in 1809; died in 1878. In 1839 he published *Commentaries on the Law of Nations*. There was then no English treatise on the subject (though there were two by Americans), and

<sup>1</sup>According to the six articles by Nys, "*Les Etats-Unis et le droit des gens*" in *Revue de droit international*, 1909, p. 383, the Americans, during the English-French war of 1803-1812, lost 917 ships captured by the English, and 558 captured by the French.

Manning's book was noticeable for its historical method, its appreciation of the combination of the ethical and customary elements in international law, as well as for the exactness of its reasoning and its artistic completeness. The book at first attracted little attention, but was gradually found useful by teachers, and was cited as an authority in the courts. The new edition, issued in 1875, was revised and enlarged by Professor Sheldon Amos, with a preface by Manning.

*Page 257.*—The commencement of the armed neutrality of 1780, may be traced to a circular issued by the Russian Court to different European Powers, dated 28th February, 1780. This document, after setting forth the great tenderness which the Empress had herself evinced in regard to neutral commerce, and the vexations, on the other hand, which neutral commerce, especially Russian, had been subjected to during the existing war, went on to state that Her Imperial Majesty felt called upon to take measures to maintain her own dignity and the welfare of her subjects; and that, to prevent future misunderstanding, she had determined to communicate the principles on which she proposed to act, which she did with the greater confidence, as these principles were based on the primitive rights of nations, were such as every nation had a right to insist on, and were such as the belligerent States could not invalidate without violating the laws of neutrality, and without disavowing the maxims which they themselves had adopted, especially in different treaties and public engagements. The principles referred to consisted of the following provisions:

I. That neutral ships might freely trade from port to port, and upon the coasts of nations at war.

II. That the property of the subjects of belligerent Powers should be free on board neutral ships, excepting goods that were contraband.

III. That with regard to contraband goods, the Empress bound herself by what was contained in the Articles 10 and 11 of her treaty with Great Britain, extending these obligations to all belligerent Powers.

IV. That to determine what characterises a blockaded port, this term shall be confined to places where there is an evident danger in entering, from the arrangements of the Power which is attacking, with vessels stationary and sufficiently close.

V. That these principles shall serve for a rule in the proceedings and judgments on the legality of prizes.

To support these principles, the Empress added that she had fitted out a considerable portion of her fleet, which she, nevertheless, trusted

that the interests of her subjects, or the honour of her flag, would not render it necessary to employ.<sup>1</sup>

This manifesto, with the second article of which we are at present alone concerned, was forwarded to different belligerent and neutral Powers. In reply to this communication, France,<sup>2</sup> Spain,<sup>3</sup> and the United Provinces,<sup>4</sup> immediately expressed their concurrence in its provisions.

But Great Britain never acquiesced in the pretensions of the Russian memorial, and the reply of our Court to the Russian communication stated, that "His Majesty hath acted towards friendly and neutral Powers according to their own procedure respecting Great Britain, and *conformably to the clearest principles generally acknowledged as the laws of nations, being the only law between Powers where no treaties subsist*, and agreeably to the tenor of his different engagements with other Powers, whose engagements have altered this primitive law, by mutual stipulations proportioned to the will and convenience of the contracting parties:" that precise orders had been given respecting the flag and commerce of Russia, according to the law of nations and the tenor of our treaty of commerce; that it was to be presumed that no irregularity would happen, but that otherwise redress would be afforded by our courts of admiralty, judging according to the law of nations, "in so equitable a manner, that Her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses."<sup>5</sup>

Negotiations subsequently took place between some of the northern Powers, explanatory of the assistance that was to be afforded in case the concurrence in an association should draw down an attack upon one of the confederates.<sup>6</sup> In July, 1780, Denmark, and afterwards Sweden, forwarded circulars to the Courts of London, Paris, and Madrid, stating their intention to abide by the five articles of the Russian manifesto, which were copied *verbatim*, with the exception of the alteration of the date of the respective treaties defining contraband. In reply to these circulars France and Spain returned answers highly applauding the proceedings of the northern Courts, and stating their acquiescence in the provisions of the new arrangements.<sup>7</sup>

<sup>1</sup>*Post*, p. 273

<sup>3</sup>*Post*, p. 279.

<sup>2</sup>*Post*, p. 284

<sup>4</sup>*Post*, p. 283.

<sup>5</sup>*Post*, p. 282.

<sup>6</sup>For the notes between Russia and Sweden, see *post*, pp. 276, 288

<sup>7</sup>*Post*, pp. 290, 295, 297, 307, 308, 309, 317, 320.

But Great Britain appealed to the faith of treaties, of which the conduct of Denmark and Sweden was in direct violation. In the British note to Denmark, dated 25th July, 1780, it was stated that the Danish commerce had always been treated by us in conformity with the treaties which had subsisted between the two nations for upwards of a century (the treaty of 1670 being still in full force), that "their reciprocal rights and duties were evidently traced by these solemn engagements, which would become illusory could they be changed otherwise than by mutual consent. They subsisted at the present moment in their full force, and, equally obligatory on each of the contracting Powers, they formed an inviolable law for both." Our Government had always followed their stipulations, and expected the same conduct from the Court of Denmark.<sup>1</sup>

In the same manner, in the British reply to the note of Sweden, it was stated that the articles of our treaties with Sweden offered a direct answer to her novel pretensions. The twelfth article of our treaty of 1661 was cited, wherein it is expressly stated that the goods of enemies shall not be concealed on board the ships of the other confederate; and that the goods of enemies found on board the ships of either confederate shall be made prize. But the goods of the subjects of the confederate shall be restored. Treaties, it was added, can not be altered, unless by the mutual consent of the contracting Parties; they are equally obligatory on both, and the King would observe and maintain them as a sacred and inviolable law.<sup>2</sup>

Appeal to the faith of treaties had, however, no effect on the conduct of these courts. Not that the obligation of these treaties was, or could be, denied. So far from it, these treaties were expressly cited by these courts themselves; and, with what would be called impudence in private transactions, some of the articles of these treaties were appealed to as still existing, by both Sweden and Denmark, while other articles of the same treaties were flagrantly violated at the same moment. Thus Denmark, in her treaty with Russia, stated in Article 3, that she would abide by her treaty with Great Britain of 1670, for her definition of contraband between herself and England;<sup>3</sup> yet, by this same treaty, provision was made to prevent the goods of enemies from being concealed on board the ships of friends. And in Article 2 of the treaty between Sweden and Russia, Sweden refers expressly to Article

<sup>1</sup>*Post*, p. 308

<sup>2</sup>*Post*, p. 317.

<sup>3</sup>*Post*, p. 299.



11 of her treaty of 1661, for her definition of contraband between herself and England:<sup>1</sup> yet, by the very next article, the twelfth, it was engaged that the goods of enemies should be taken from the ships of friends. Yet it was with such a flagrant violation of right, for the sake of a transient interest, that these Powers entered upon treaties, based, according to their highsounding preamble, on the dignity of the contracting sovereigns, their care for the happiness of their people, and their solicitude for the rights of mankind in general.

On the 28 June/9 July, 1780, was made the treaty between Russia and Denmark, which was the first of the series establishing the confederacy of the armed neutrality. By Article 3 of this treaty, it was stated, that "their Majesties after having already insisted, in their declarations to the belligerent Powers, on the general principles of natural right, of which the freedom of commerce and navigation as well as the rights of neutral nations are a direct consequence, have resolved no longer to allow them to be dependent on an arbitrary interpretation, suggested by isolated and momentary interests. With this view, they have agreed,

I. That all vessels may freely navigate from port to port, and upon the coasts of nations at war.

II. That property belonging to the subjects of States at war, shall be free on board neutral vessels, excepting merchandise of contraband.

III. That to determine what characterises a blockaded port, this term shall only be allowed to those where, from the arrangements of the Power which is blockading, with vessels stationary and sufficiently near, there is an evident danger in entering.

IV. That neutral vessels can not be stopped, without just cause and evident reasons; that they shall be adjudged without delay; that the proceedings shall be always uniform, prompt, and legal; and that, in every instance, besides the reparation afforded in cases in which there has been loss, but not offence, complete satisfaction shall be given for the insult offered to the flag of their Majesties.

The treaty then went on to engage that each party should equip a fleet to support these principles, that mutual succour should be afforded, and that both parties should act in concert; that these stipulations should be regarded as permanent, and that other Powers should be invited to accede to similar conventions.<sup>2</sup>

<sup>1</sup>*Post*, p. 311.

<sup>2</sup>*Post*, p. 299.

A treaty precisely similar, and copying the above four stipulations, and the ensuing articles, *verbatim*, was made between Russia and Sweden, on the 21 July/1 August, 1780, and Sweden and Denmark exchanged declarations, each binding themselves to the Russian treaty with the other, and making the confederacy for mutual defence complete between these three Powers.<sup>1</sup>

On the 24th December, 1780, the United Provinces made, at St. Petersburg, a treaty with Russia, in which they acceded to the above treaties with the northern Courts, and issued declarations of their joining in the full extent of the new confederacy.<sup>2</sup>

Before the conclusion of this treaty, however, Great Britain had declared war, on the 20th December, against the United Provinces. By treaties existing between this country and the United Provinces, it had been agreed that the principle that "free ships make free goods" should exist between the two countries; and also an alliance for mutual defence existed engaging that if either party were attacked, the other party should break with the aggressor in two months from the time of requisition to do so. On France and Spain joining in the American war, such requisition was made by our Ambassador, but was evaded by the United Provinces. A hostile feeling was produced by this conduct, and also by the evident favouring of the American cause by the United Provinces; and, on the 17th April, 1780 a declaration was published by our Government, announcing that the succours stipulated by the treaty of 1678 never having been afforded by the States General, the provisions of the treaty of commerce of 1674 should be suspended, and the United Provinces treated, no longer in accordance with the privileges there granted, but only on the footing of other neutral nations.<sup>3</sup> Disputes had already taken place between the two countries regarding a squadron commanded by Paul Jones, which had been refitted in the Texel, and also respecting a fleet of merchantmen convoyed by Count Byland, who had been fired at, upon his refusing to submit to search, and the naval materials on board his merchantmen confiscated as contraband, contrary to the provisions of the treaty of 1674. The angry feeling between the two countries was aggravated by the accession of the United Provinces to the Russian memorial; and a crisis arose upon the capture of Mr. Laurens, formerly president of

<sup>1</sup>*Post*, pp. 311, 317, 321, 322, 324.

<sup>2</sup>*Post*, pp. 346–353.

<sup>3</sup>*Post*, p. 277.

the American Congress, who was taken by a British ship, and among whose papers were found documents shewing that the United Provinces had been in friendly correspondence with the United States ever since 1778, and who had with him a sketch of a treaty of amity and commerce between the United States and the States General, which appeared to be in a train of negotiation, and which was approved by the Pensionary of Amsterdam.<sup>1</sup>

Soon after the British declaration of war, the States General made application for the assistance stipulated in the new confederacy, in case any member of the alliance should be attacked in consequence of the principles there promulgated. But Sweden, to whom the application was made, replied that the British declaration could hardly be regarded as a consequence of the States General joining the new confederacy, inasmuch as that junction was made after the British declaration of war, the latter being dated London, the 20th December, while the Dutch treaty was dated St. Petersburg, the 24th December. But although not coming within the terms of the treaty for mutual defence, it was possible that the British declaration had been hastened in order to anticipate that contingency, although the conduct of the United Provinces in regard to the Russian memorial was not noticed in the British manifesto. Still, if the northern Courts declared war in consequence of our breaking with Holland, they removed all the advantages of neutrality which the confederacy was especially established to promote; while, on the other hand, if the United Provinces were left to their fate, it would seem as if the confederacy had agreed to a convention which they were afraid to carry into execution. Therefore, concluded the Swedish note, it would be best for the northern Courts to adopt a middle course, and present in their joint names a memorial to the British Court, offering their mediation between Great Britain and the United Provinces. In this proposition Russia acquiesced.<sup>2</sup> But the position of the northern Powers with regard to this country, was not, at that period, the most likely to make an offer of mediation acceptable; and the Dutch, having deserted our alliance for the prospect of a more gainful union, found themselves unsupported by their new confederates, and had to buffet for themselves till the end of the war, and to see their commerce cut up, and some of their colonies taken from them, till they were included in the general peace, in 1783, with the loss of Negapatam.

<sup>1</sup>See the British Manifesto, *post*, p. 330.

<sup>2</sup>See the correspondence, *post*, pp. 366-380.

To return to the acts of accession to the armed neutrality. On the 8th May, 1781, a treaty was made between Prussia and Russia, embodying the four articles of the new alliance, and establishing Prussia as a member of the confederacy.<sup>1</sup>

On the 10th July, 1781, a similar treaty was made between Russia and the Emperor of Germany.<sup>2</sup>

A similar treaty was made between Russia and Portugal, dated the 13th July, 1782.<sup>3</sup>

And on the 10th February, 1783, the King of the Two Sicilies acceded to the northern confederacy.<sup>4</sup>

Thus had all the principal continental Powers acceded to the principles of the armed neutrality, when its operations were suspended by the general peace of 1783. In whatever point of view we regard this celebrated confederacy, it is difficult to find anything respectable connected with it. Among others, the following observations suggest themselves. I. The abandonment of principle for interest marks the commencement of the armed neutrality; an open breach of faith being made by the two Powers that first joined Russia in the association. II. The ready manner in which one party of the belligerent States acceded to the novel principles, was itself a proof that these principles were inconsistent with the duties of neutrality, as they evidently assisted one side in the contest, and injured the opposed State, which refused to acquiesce in these pretensions. The declaration of France and Spain therefore, that they approved of the northern alliance, was a disproof, not a sanction, of the justice of the confederacy; and States, with the title of an armed *neutrality*, undertook to interfere in the issue of a war, by measures which directly assisted one, and directly injured the other, belligerent. III. A principle which the northern confederacy undertook to establish as a fundamental right of neutrality, was then for the first time heard of in Europe; for the second article of the statement of principles declares that "free ships shall make free goods," but does not convey the corresponding stipulation that "enemy's ships shall make enemy's goods." The latter engagement is never once referred to in any of the documents creating the armed neutrality. But never had there been, among Christian Powers, a treaty which conveyed the former immunity without also

<sup>1</sup>May 19, 1781, new style. *Post*, p. 397.

<sup>2</sup>See footnote 2, *post*, p. 403.

<sup>3</sup>July 24, 1782, new style. *Post*, p. 420.

<sup>4</sup>February 21, 1783, new style. *Post*, p. 433.

engaging the latter privilege. One principle had invariably been conveyed in exchange for the other. But the framers of the armed neutrality, relying upon the imposing aspect of their union, and upon Great Britain having already to cope with several enemies, defied at once precedent and principle, and attempted to establish by force what their own subsequent conduct proved them not to have regarded as a right, and what never had been claimed as such by any Government whatever. IV. The number of the States that joined in the confederacy does not in the least affect the question of the right of the principle which they sought to establish. An universal, or even general, continued acquiescence in any given state-principle, may make it probable that such a principle is based on universal law. But no combination of States can establish that as a part of the law of nations, which is not dependent upon natural equity, nor can they, rightfully, make the observance of any stipulation incumbent upon any but the contracting Parties. A glance at the position of the European Powers, at the time of the armed neutrality, will destroy any belief that the principles of the confederacy must have been just because they were so generally recognized. Russia, Sweden, Denmark, and the United Provinces, had the most direct and immediate interest in the pretensions which they engaged to defend. Remaining neutral at a time when some of the greatest commercial States were at war, their shipping interest would be incalculably benefited if they could carry on trade, "not with, but for," the belligerent countries, and transport the property of the subjects of the latter exempt from the capture of the adverse party. On the other hand, France and Spain had equally a direct interest in the principles of the armed neutrality, because, from their naval inferiority, they were unable to carry on their commerce themselves, and were glad to commit their property to the safe custody of neutral bottoms if these secured their cargoes from capture. Thus all the principal parties to this alliance were directly interested in the claims thereby advanced. But, as a test of the sincerity of their professions, it will be as well to consider whether these same parties had adhered to these principles before this particular contingency arose, or whether they maintained them after this transient advantage had passed away? With regard to the former, it is notorious that the maritime codes of France and Spain had been of unusual severity, and that so far from sparing enemies' goods on board a neutral ship, they confiscated such neutral ship into the bargain, unless where special treaty came to the

rescue of the neutral: and, again, Sweden and Denmark had treaties, which had been in constant force for more than a century, engaging the reverse of the principle of the armed neutrality. Thus the conduct of these Powers had been in direct contradiction to the novel pretension, *before* the occurrence of this particular opportunity. And with respect to their conduct *after* it, it must be remarked—V, that some of the leading parties to the armed neutrality violated its provisions on the very first occasion in which they happened to be belligerents. In the war between Sweden and Russia, in 1788, Gustavus III renounced the principles of the armed neutrality, and Russia followed the example, although not with the same open profession.<sup>1</sup> And this was done only five years after one of the treaties of the armed neutrality, notwithstanding the permanency which was declared to be guaranteed to the new stipulations by Article 9 of the treaty of 1780, affording an obvious satire on the motives that led to the confederacy, and to the great scandal of those writers who have advocated the maxims thus attempted to be established. VI. Finally, it must be remarked, that the armed neutrality of 1780 was attended by no consequence to Great Britain. Our Government never once acceded to the principles therein put forward, but made emphatic remonstrance against admitting such claims. No decisive issue took place between the two Parties, the northern confederates having no case for their joint action against our Government, and Great Britain, having already France, Spain, the United States, and the United Provinces to oppose single-handed, was not in a position to take such measures for the vindication of her maritime rights as we shall see she had recourse to on a subsequent occasion.

In most of the treaties following the restoration of peace, the principle that “free ships make free goods,” and the converse, was stipulated. Before that period, however, was made the treaty between the United States and the United Provinces, in 1782, where these two stipulations are found in Articles 11 and 12.<sup>2</sup> And in the same year, 1782, was made a treaty of commerce between Denmark and Russia, where the four articles of the armed neutrality are embodied in Article 17.<sup>3</sup> The treaty of Versailles, between France and Great Britain, in 1783, renews the treaty of commerce of 1713, in which the two clauses are

<sup>1</sup>See Büsch, *Völkersrecht*, pp. 34, 36.

<sup>2</sup>Martens, *Recueil*, vol. 3, pp. 439, 441.

<sup>3</sup>*Ibid.* 474.

inserted,<sup>1</sup> which is also done in Article 2 of the treaty of the same date between Great Britain and Spain.<sup>2</sup> But no such renewal of former treaties was made in our treaty with the United Provinces, in 1784.<sup>3</sup> The two clauses are found in Articles 7 and 14 of the treaty between Sweden and the United States, in 1783.<sup>4</sup> On the contrary, the treaty of the same year between Russia and the Porte, engages, Article 43, that Russian goods on board the ship of an enemy of the Porte shall not be confiscated, nor the merchants made slaves, if they be there for peaceful purposes,—being in accordance with the old rule. This treaty was renewed by the treaty of Jassy in 1792.<sup>5</sup>

In the treaty between Prussia and the United States, in 1785, the twelfth article engages a treatment similar to the second article of the armed neutrality, that is, it stipulates that the goods of enemies shall be free on board the ships of friends, without conveying the counter stipulation that the goods of friends shall be confiscated if found on board the ships of enemies.<sup>6</sup> The treaty between France and the United Provinces, in 1785, renews, by Article 8, the articles of the treaty of Utrecht, which stipulated that “free ships make free goods,” and the converse.<sup>7</sup> The treaty between Austria and Russia, of the same year, renews the engagements of the armed neutrality, by Article 12.<sup>8</sup> The treaty of commerce between Great Britain and France, in 1786, engages that “free ships make free goods,” and the converse, by Articles 20 and 29.<sup>9</sup> The treaty between France and Russia, in 1787, renews the engagements of the armed neutrality, by Article 27;<sup>10</sup> which is also done by the treaty between Russia and the King of the Sicilies, of the same year, Article 18;<sup>11</sup> and, again, by the treaty between Russia and Portugal, also of 1787, Article 22.<sup>12</sup> In a treaty, of the same year, between the United States and Morocco, it was agreed, Article 3, that enemies’ goods should be free on board neutral vessels; and also, that neutral goods should be free on board an enemy’s vessel. And the same stipulation is made by the treaty between the United States and Tripoli, in 1796, and between the United States and Tunis, in 1797.<sup>13</sup> In the treaty of commerce between France and Hamburg, in 1789, the engagements of the armed neutrality are

<sup>1</sup>Martens, *Recueil*, vol. 3, p. 521.

<sup>2</sup>*Ibid.* 560.

<sup>3</sup>*Ibid.* 635, and vol. 5, p. 293.

<sup>4</sup>*Ibid.* 68.

<sup>5</sup>*Ibid.* 168, 172.

<sup>6</sup>*Ibid.* 236.

<sup>7</sup>*Ibid.* 248, and vol. 6, pp. 298, 406.

<sup>8</sup>*Ibid.* 543.

<sup>9</sup>*Ibid.* 568, 572.

<sup>10</sup>*Ibid.*, vol. 4, p. 42.

<sup>11</sup>*Ibid.* 76.

<sup>12</sup>*Ibid.* 210.

<sup>13</sup>*Ibid.* 327.

stipulated by Article 2.<sup>1</sup> In the treaty, also of 1789, between Denmark and Genoa, the engagements that "free ships make free goods," and the converse, are agreed to by Articles 5 and 9.<sup>2</sup>

Such a collection of treaties, agreeing in the principle that the cargo shall be free, or be confiscated, according as the ship is neutral or enemy, seem to go far in establishing, not that this principle was enforced by the law of nations independent of treaty, but that it was the general wish of maritime Powers that this practice should be adopted, and that it might probably become the conventional law of Europe, among those States, and only those States, which were entering into these engagements.

But such an opinion was soon proved fallacious by the result. Not fifteen years from the date of the armed neutrality, the wars with France had involved almost every European State; and the principle which appeared obtaining such general prevalence was abandoned by nearly all the members of the northern confederacy, the great leader in that alliance, Russia, being the chief instigator of the unusual severities which were adopted towards neutrals.

*Page 274.*—We now come to the period when, by the second armed neutrality, in the year 1800, an attempt was again made to force on this country the recognition of the principle that "free ships make free goods." The second armed neutrality differs from the first in many important particulars: It had its origin in discussions regarding the right of searching merchants ships sailing under the protection of convoy,—which will be considered in a subsequent chapter on the right of search. The irritation produced by this discussion had been aggravated by the capture, under questionable circumstances, of two Spanish frigates by the British, who had taken possession of a Swedish ship in the port of Barcelona, during the night, and under cover of her neutral flag had surprised and taken two Spanish frigates lying under the batteries of Barcelona. These differences might, however, have been amicably terminated, but for the disappointment of the Emperor of Russia regarding the island of Malta, which he expected to have had given up to him by the British. Lord Whitworth, who had been sent to Copenhagen on a special mission regarding the Danish convoy, had concluded, on the 29th August, 1800, a convention, in which that dispute was adjusted in a friendly manner.<sup>3</sup> But before this

<sup>1</sup>*Ibid.*, vol. 4, p. 426.

<sup>2</sup>*Ibid.* 442, 443.

<sup>3</sup>*Post*, p. 492.



could be known at St. Petersburg, the Emperor Paul had issued a declaration, dated 15/27 August, inviting the Courts of Sweden, Prussia, and Denmark, to re-unite in a confederacy for an armed neutrality, and giving the British conduct in regard to the Danish convoy as a reason for such an alliance. On learning that the British squadron, sent to support the representations of Lord Whitworth, had passed the Sound, the Emperor Paul laid an embargo on all British property in his dominions, which embargo was taken off on the convention between Great Britain and Denmark being known at St. Petersburg.<sup>1</sup>

On the surrender of Malta to the British in September, 1800, the Emperor Paul claimed this island from our Government, alleging his convention of 1798, in which, however, there was not a single clause, affording not only a reason, but even a pretext, for such a demand.<sup>2</sup> It will be remembered that Paul had become Grand Master of the Knights of Malta, a fantastic attachment to that order being one of the many points which gave color to the suspicion of his insanity. Vexation at the refusal of the British to comply with his request, induced him to resort to the first means that offered of injuring this country, and in spite of the treaty between Great Britain and Russia, of which the twelfth article expressly forbade that, in case of rupture, the goods or persons of the subjects of either country should be detained or confiscated he laid an embargo on all British property in his dominions; and a British merchantman having managed to escape from Narva, he ordered that another British vessel should be burned.<sup>3</sup>

While in this state of incipient hostility, Russia concluded with Sweden, on the 4/16 December, 1800, a treaty renewing the confederacy for an armed neutrality. The principles declared to be established by this treaty, Article 3, were as follows:

I. That any vessel may freely sail from port to port, and on the coasts of nations at war.

II. That property belonging to the subjects of belligerent Powers shall be free on board the ships of neutrals, excepting goods that are contraband.

III. That to determine what constitutes a blockaded port, this term shall only be allowed to ports where, from the arrangements of the Power which is attacking with vessels stationary and sufficiently close,

<sup>1</sup>*Post*, pp. 489, 493.

<sup>2</sup>See the treaty, which is a treaty of subsidy, Martens, *Recueil*, vol. 6, p. 557.

<sup>3</sup>*Post*, p. 516.

there is an evident danger in entering; and that any vessel sailing towards a blockaded port shall not be regarded as contravening the present convention, unless, after having been warned of the state of the port by the commander of the blockading squadron, she shall attempt to enter, employing either force or fraud.

IV. That neutral vessels may not be detained except on just grounds and evident facts; that they shall be adjudged without delay, that the process shall always be uniform, prompt, and legal; and that in every instance, besides an indemnity to parties who have suffered loss without having committed wrong, there shall be afforded a complete satisfaction for the insult offered to the flag of Their Majesties.

V. That the declaration of the officer commanding the ship or ships of the royal or imperial navy, accompanying a convoy of one or more merchant ships, that his convoy has not on board any goods that are contraband, shall suffice to prevent there being any visitation for search on board his ship or the ships of his convoy.

By subsequent articles mutual assistance is promised in case of attack.<sup>1</sup>

Articles to the same effect were engaged by a treaty, of the same date, between Russia and Denmark,<sup>2</sup> and, two days later, by a treaty between Russia and Prussia.<sup>3</sup>

An account of subsequent proceedings regarding this confederacy is given in the present treatise, in the chapter on the right of search, to which the article on convoy seemed to make the discussion most properly belong. It will be only necessary here to recapitulate that, the above-named States having joined themselves to a Power, *after* it had placed itself in a situation of equivocal amity with this country, an embargo was laid upon Danish and Swedish, as well as Russian property, in British ports. Subsequently the battle of Copenhagen took place, the Emperor Paul was assassinated, and the Emperor Alexander, immediately on his accession, made a treaty, which adjusted the dispute with Great Britain. In this treaty, dated 5/17 June, 1801, Great Britain acceded to the proposals of the northern Courts regarding convoy, and Russia agreed to the old principle, that neutral ships should not protect enemies' property. By Article 3, sec. 2, it was agreed that goods embarked in the ships of neutrals shall be free,

<sup>1</sup>*Post*, p. 531.

<sup>2</sup>*Post*, p. 537.

<sup>3</sup>*Post*, p. 544.

excepting contraband of war *and the property of enemies*. To this treaty Denmark and Sweden afterwards acceded.<sup>1</sup> Thus the principle that "free ships make free goods," had been attempted to be enforced by a confederacy which was broken by a single maritime Power, and the principle of the old rule was vindicated and reestablished. In the first armed neutrality, Great Britain, though she never acquiesced in the pretensions of that confederacy, and formally protested against them, yet had too many foes at the same time to make an addition to them expedient. But, in the second armed neutrality, we were enabled to shew that we would not permit maritime rights to be invaded by confederates united to subvert the law of nations for their own selfish purposes; we forced an abandonment of principles which these confederates united to defend; and Nelson's glory at Copenhagen was of the purest character, arising from valor successfully exercised in the vindication of justice.

A treaty embodying the five articles of the second armed neutrality, was made between Russia and Sweden on the 1/13 of March, 1801,<sup>2</sup> that is, before the attack on Copenhagen, and ratified at St. Petersburg on the 30 May/11 June, that is, after the signature of the above-named treaty between Russia and Great Britain. This merely shows how completely impossible it is to deduce anything like a system from the treaties of nations regarding the principle of "free ships free goods;" Russia, the leader in both the armed neutralities, making, in the instances before us, a treaty embodying one principle with Great Britain, while she ratified, in the very same week, a treaty with Sweden containing exactly the reverse principle.

**MARTENS:** "*Le Centenaire de la Déclaration de Neutralité de 1780*" in *Revue de Droit International et de Législation Comparée*, volume 13, 1881.

Fedor Fedorovich Martens. Russian publicist; born in 1845; died in 1909; professor, diplomat, and arbitrator in international controversies; member of the Institute of International Law; member of the permanent court of arbitration

<sup>1</sup>See the three treaties, *post*, pp. 595, 606, and note.

<sup>2</sup>Martens, *Recueil*, vol. 7, p. 315.

at The Hague; Russian delegate to many international conferences, including the two Hague Peace Conferences.

Among his works on international law the two most important are his authoritative treatise in Russian on international law of civilized nations, published in 1882-83, fifth edition in 1904-05, which has been translated into several languages, and *Recueil des traités et conventions conclus par la Russie avec les Puissances étrangères*, 1874-1909, 15 volumes.

*Page 94.*—It was one hundred years ago on the 28th of February (11th of March) of this year that Catherine II established by her famous declaration the first armed neutrality. All who are interested in the study of international law know the influence which this act of the Semiramis of the North exerted on the progress of maritime law and on international relations.

It was Russia's moral duty to celebrate the jubilee of an act by which it had so justly acquired a right to the gratitude of all nations. The *Society for the Encouragement of Russian Navigation*, thanks to the enlightened energy of one of its most distinguished members, Captain Berezhine, took up the question of how best to do honor to the memory of the great Empress. A special committee was formed and a program prepared. Thanks to the disinterested cooperation of the representatives of the imperial navy and of the merchant marine, of merchants and of scientists, it was decided to open a public subscription throughout Russia for the purpose of creating a fund of several thousand rubles, the interest on which was to be awarded periodically as prizes to the authors of the most meritorious works in the field of international maritime law. The subject selected for the first competition was "The history of the declaration of Catherine II; its influence on the development of international relations in time of war and its significance as regards the progress of international maritime law."

The proceedings of the above-mentioned committee, as well as the decisions it has reached, have been published in a pamphlet. In general they have been well received by the Russian Press. Up to the present time, however, the fund necessary to carry out the committee's program has not reached the required figure. A large amount is needed, since the prizes to be awarded are to consist of considerable sums of money. Because of the failure to procure the fund, which was the basis of the program for the celebration of Catherine II's declaration, the Society for the Encouragement of Russian Naviga-

tion deemed it necessary to abstain from taking an active part in the celebration of February 28 of this year.

The River Yacht Club of St. Petersburg replaced the society on this occasion. The honorable president of the club, Captain Brylkine, invited the public of the capital to an official meeting and he honored me with the request that I deliver a lecture on this important act of the great Empress.

In my account of the origin, and the historical and legal scope of the first armed neutrality, I was able to profit by facts and documents discovered in the archives of the Russian Empire, some of which had not been made public. The following are the salient points of this lecture, which was delivered before a large and sympathetic audience.

After stating the opinions of jurists on the declaration of February 28, 1780, and pointing out the respect in which most of them hold this act, I mentioned the opposite opinion expressed by Wheaton and some other writers, who asserted that the declaration was of an accidental character and the result of a palace intrigue and the jealousy of two courtiers (Panin and Potemkin). Outlining the intolerable situation in which neutral commerce found itself at that time and demonstrating, with proofs in support of my contentions, the error of Wheaton and his partisans, I endeavored to determine the real cause and origin of the declaration. To settle the question of to whom belonged the honor of drafting the document, whether to the Empress herself or to one of her high officials, I gave a detailed character sketch of Prince Potemkin and Count Panin. My conclusion was that neither of them understood the scope of the declaration, when it was communicated to them, already drafted, to be put into effect. The declaration was especially at variance with the views and aspirations of Count Nikita Panin, Minister of Foreign Affairs.

Was the idea of establishing armed neutrality suggested to Catherine II by her allies, the Emperor Joseph II or Frederick the Great? It was easy for me to prove, with the aid of authenticated facts taken from the diplomatic correspondence of the Court of St. Petersburg with the Courts of Vienna and Berlin, that neither the Emperor Joseph II nor Kaunitz nor the King of Prussia appreciated the full scope of the step taken by the Empress of Russia. They laughed at the importance that the Empress attached to armed neutrality, which she called her *darling child*. Hence no one but the Empress Catherine herself could have been the author of the declaration. A careful

study of the Empress, of her policy, of her incomparable ability, of her very faults, has convinced me of the correctness of this conclusion.

After having examined the principles set forth in the declaration of February 28, I concluded my lecture with the following words:

"Respect for the great deeds of our ancestors, respect for the history of our people, by strengthening us in our struggle with the sinister forces that surround us, makes it possible for us to turn our eyes with confidence toward the future. By respecting our history and our past, we come to appreciate the good that is in us, and we are urged ever forward in the development of social organization, of public order, and of education.

"May this anniversary recall to us the position that Russia occupied in 1780; may it confirm us in the thought that Russian policy met with great success at the very time when Russia was giving attentive ear to the voice of civilized Europe, in order that she might climb higher and higher up the ladder of intellectual and civil progress. Let us not forget that it was thanks to the declaration, whose centenary jubilee we are celebrating to-day, that light was for the first time thrown upon international relations in time of naval war; let us not forget that this diffusion of light, of education, of respect for law and right, is a lesson taught by the great Empress to Russian society of to-day."

**MATZEN:** *Forelæsninger over den Positive Folkeret.* Copenhagen, 1900.

Henning Matzen. Danish publicist; born in 1840; died in 1910; member of the Institute of International Law; professor of international law at the University of Copenhagen. In 1879 he was elected member of the senate and occupied this position by successive elections until his death. He was many times charged by his Government with international missions and, as a member of the permanent court of arbitration, rendered marked service.

One of Matzen's most important contributions to international law is his *Forelæsninger over den Positive Folkeret*, a systematic exposition of positive international law distinguished for its independent research.

§ 25, *page 315*.—In the matter of the freedom of navigation of neutral merchant ships in time of war, the interests of the belligerents and those of the neutral Powers are to a great extent opposed to one another, and through the centuries there has therefore been conflict between them, partly in regard to the carrying out of the recognized basic principles with reference to blockades and war contraband, partly in reference to these same principles in the application of the right of neutral ships to transport enemy goods, and of the right of neutral subjects to have their goods carried in enemy ships. As to the last-named point, a nearly general agreement has been reached by the Paris Declaration of April 16, 1856, which again followed the so-called armed neutrality of July 9, 1780, about which more will be said directly.

With regard to neutral ships, there may first be set forth the rule—not considering for the moment the matter of blockade—that regardless of war, they may sail not only from one neutral port to another neutral port, but even from a neutral port to the port of a belligerent Power, and finally as in time of peace, from the port of a belligerent Power to another port of a belligerent Power. These principles were not the recognized rule in earlier times, when, for instance, England and Holland in 1689 even prohibited all neutral navigation to France, and when, complaint having been made in regard thereto, William III said “that such was the right of the cannon”;<sup>1</sup> but in the eighteenth century, it may be said, that they (these principles) were generally accepted, as in the peace of Utrecht, 1713, Article 17;<sup>2</sup> but only with certain reservations in regard to England. During the Seven Years’ War she had established the rule that neutral ships could only sail between enemy ports to the same extent as was the case in time of peace. At the time, this was of considerable importance with regard to expeditions between the mother country and the colonies; but as navigation is now generally free, it is of importance only with regard to coastwise shipping. The armed neutrality of 1780, Article 3 (1), maintained expressly: that any vessel may sail freely from port to port and along the coasts of the nations at war, and this clause is re-

<sup>1</sup>Gessner, p. 34; Holtzendorff, vol. 4, p. 620; C. Dupuis, p. 51; treaty with England and Holland of December 18, 1691, Article 4, which only licensed Danish-Norwegian ships to sail direct between Denmark-Norway and France; see also, treaty with France of August 23, 1742, Article 20.

<sup>2</sup>Gessner, p. 285; Godchot, p. 106.

asserted in the other armed neutrality of 1800, Article 3 (1);<sup>1</sup> but England would not accept the clause, and in the treaty between England and Russia of June 17, 1801, Article 3 (1), subscribed to by Denmark on October 23 of the same year, the clause is changed to "that the ships of the neutral Power may navigate freely to the ports, and upon the coasts of the nations at war." This is in conflict with the principle established by Article 3 of the armed neutrality of 1780 to the effect that ships of neutral Powers should be free to sail from port to port and along the coasts of the nations at war;<sup>2</sup> and one may therefore not presume to say with certainty that the Paris Declaration meant to do away with the restriction referred to. In connection with this, we come next to the principle of *continuous voyage* which has been developed by the English juridical practice, in consequence of which the said restriction could not be evaded by having a neutral ship carry goods from an enemy port,—for instance, from a French colony,—to a neutral place,—for instance, to a Danish colony,—and forwarding them from there, on a neutral ship, to the mother country. The further question may therefore be raised, whether, in time of war, a neutral ship must not be debarred from running a belligerent's errands by exporting such trade as in time of peace the national ships of the land engage in, if by lawful authority they do not possess the exclusive right thereto, as for instance, to maintain the regular navigation between the different parts of the land.<sup>4</sup> But in this wide, indefinite extension, the limitation has, however, not been definitely established, and it can not be established without coming in conflict with the general rule relative to the neutral ships' freedom of navigation which in every case must enjoy the same right in time of war as in time of peace, and which, according to the law in force, they can only forfeit with regard to the belligerent Power by transporting war contraband for resistance or in any other manner entering into its military service, as for instance, by transporting its troops or dispatches; or they may be deprived of that right when the particular port is closed to traffic by a blockade.

We come next to the question as to what goods the neutral ship

<sup>1</sup>Cf. treaty with Prussia of June 17, 1818, Article 16, which expressly repeats the same clause, along with the "free ship, free goods" clause reproduced in Article 17, and the definition about the effectivity of a blockade in Article 18.

<sup>2</sup>Cf. Gessner, p. 283; T. J. Lawrence, p. 595.

<sup>3</sup>Holtzendorff, vol. 4, p. 727; J. Schovelin, p. 24.

<sup>4</sup>C. Dupuis, p. 151.



may have on board. If for the moment we except the goods which constitute war contraband, it has at all times been accepted that neutral ships may transport neutral goods. The question as to what are neutral goods and what enemy goods, can become an especially practical one in case transference has taken place from an enemy to a neutral subject, and for lack of positive agreement in this matter, it must be settled according to the respective civil laws which deal with actions of acquisition;<sup>1</sup> but the English law has also established a practice whose evident purpose it was to include as many goods as possible in the class of enemy goods and which, as a result thereof, are subject to capture. Thus, goods continue to be enemy goods in spite of their sale, when this took place *in transitu*, or when the goods were the products of the enemy country;<sup>2</sup> or if they belonged to one established in the same line of business.<sup>3</sup>

Enemy goods found on a neutral ship were good prize. This was the rule according to the *Consolato del Mare* which was generally observed, and French legislation even extended the rule to the effect that enemy goods on neutral ship rendered both the neutral goods on the ship, and the ship itself subject to capture.<sup>4</sup> England, on the other hand, clung fast to the principles of the *Consolato del Mare*, as the general rule, which by way of reprisal might be used against France, or according to the treaties, deviated from, to the advantage of any privileged State.<sup>5</sup>

In opposition to the rule mentioned, the ground was broken, notably through the efforts of Holland, for the conventional clause, "free ship, free goods; unfree ship, unfree goods;" in other words, that the ship's nationality was conclusive for the merchandise on board. This standing rule was of interest to the neutral Powers, which in virtue of it could take charge of the maritime importations and exportations of the belligerent Powers; and it was of interest to the belligerent Powers which were not strong on the seas, in so far as they, by its help, could permit neutral ships to take charge of their supplies.

<sup>1</sup>C. Dupuis, p. 154.

<sup>2</sup>Cf. however, the convention between Denmark-Norway, England and Russia of 1801, Article 3 (2), *post*, pp. 595, 606; the treaty with Prussia of 1818, Article 17.

<sup>3</sup>C. Dupuis, p. 155; Despagnet, p. 670.

<sup>4</sup>Despagnet, p. 703; cf. however, Gessner, p. 726.

<sup>5</sup>Gessner, p. 44.

In the interval between 1650 and 1780, thirty-six treaties were concluded which established that clause, while only fifteen followed the old rule of the *Consolato del Mare*.<sup>1</sup> The rule was also incorporated into the peace of Utrecht attending the agreements between France, England and Holland. In the treaty between Denmark-Norway and France in 1663, the same provision was inserted<sup>2</sup> as well as in the treaty of August 23, 1742, Article 28; on the other hand, however, England would not concede it to Denmark-Norway, for which reason the latter would not, in the Seven Years' War, venture to invoke it with regard to England.<sup>3</sup> But the reaction came in 1780. During the North American War of Independence, American corsairs had seized eight merchant ships on their way from Archangel to London.<sup>4</sup> On account of this, the Russian Empress sent a note on August 28, 1778, to the Danish-Norwegian Government, calling upon the latter to enter into an alliance with Russia in defense of the inviolability of the navigation in the part of the Northern Sea adjoining the three realms. This proposition gave Bernstorff a more comprehensive insight into things, and on September 28 he had a proposition forwarded to the Russian Ambassador for an armed neutrality alliance.<sup>5</sup> This idea did not, however, from the outset meet with the approval of the Russian Government.<sup>6</sup> But it so happened that in the month of December, 1779, a Dutch ship, carrying Russian wheat, was seized by Spaniards who participated in the war as France's allies, in the Strait of Gibraltar, and in the month of February, 1780, a like fate was suffered by a Russian ship with a like cargo.<sup>7</sup> These seizures so embittered the Russian Empress that on March 10, 1780, she issued a manifesto regarding Russia's conception of the legal relations of the neutrals on the basis of the principles set forth by Bernstorff.<sup>8</sup> And thus the remarkable thing happened that though Spain's proceeding had caused the forthcoming of the manifesto, the sting in it nevertheless rebounded upon England, and especially in so far as concerned

<sup>1</sup>Despagnet, p. 704; Gessner, p. 44.

<sup>2</sup>Reedtz, p. 114; Holtzendorff, vol. 4, p. 620.

<sup>3</sup>*Historisk Tidsskrift*, III-5, p. 23; P. Vedel, p. 34; J. Schoveln, p. 12. Professor Martin Hübner answered these with vigor; see Hübner, p. 17; Gessner, Preface, p. ix and p. 32.

<sup>4</sup>Fauchille, p. 216; *Historisk Tidsskrift*, III-5, p. 14.

<sup>5</sup>*Historisk Tidsskrift*, III-5, p. 16.

<sup>6</sup>Fauchille, p. 253.

<sup>7</sup>*Ibid.*, pp. 308, 312.

<sup>8</sup>Holtzendorff, vol. 4, p. 624.

the other clause of the manifesto: free ship, free goods. With the manifesto went a request to the different Powers, especially Denmark-Norway,<sup>1</sup> to draft an outline for a neutrality alliance. Bernstorff, who disapproved of the Empress' manner of proceeding, because he wanted to continue on good terms with England, could not, however, disown the product of his own mind, and accordingly, he forwarded an outline conformable to the principles he had set up, to which the Russian Government made different formal changes and real additions which Bernstorff found not to his liking, but which, after certain formalities, he thought it nevertheless necessary to accept; and on July 9, 1780, there was concluded a maritime convention between Denmark and Russia for the maintenance of the freedom of commerce and of neutral navigation,<sup>2</sup> generally called the armed neutrality, because the contracting Parties plighted one another, by armed force to defend the rights established in the convention in the interest of the subjects of the neutral Powers. This convention was acceded to by Sweden, September 9, 1780;<sup>3</sup> by Holland, January 4, 1781;<sup>4</sup> by Prussia, May 8, 1781; by Austria, July 10, 1781; by Portugal, July 13, 1782;<sup>5</sup> by the Two Sicilies, February 10, 1783. Of the belligerent Powers, France and Spain accepted the convention on July 27 and August 4, 1780, respectively.<sup>6</sup> England, on the other hand, would not approve of it.<sup>7</sup>

The convention was concluded for the duration of the war then being waged, and under it England's position had remained so serious that she dared not expose herself to a conflict with the allied neutral Powers by continuing her former manner of proceeding which was in conflict with the convention. The latter had incorporated in its Article 9: all that has been stipulated and agreed upon, shall be considered as permanent and shall constitute the law to be applied in matters pertaining to commerce and navigation, as well as in cases involving the rights of neutral nations.<sup>8</sup>

<sup>1</sup>Fauchille, p. 318.

<sup>2</sup>*Ibid.*, p. 402; *Historisk Tidsskrift*, III-5, p. 109; J. Schovelin, p. 211; Aage Friis, p. 188.

<sup>3</sup>Fauchille, pp. 43, 484.

<sup>4</sup>*Ibid.*, p. 513.

<sup>5</sup>*Ibid.*, p. 552.

<sup>6</sup>Godchot, p. 120.

<sup>7</sup>*Ibid.*

<sup>8</sup>See treaty of commerce with Russia of October 19, 1782, Article 16, in which the contracting Parties declare their will to regard the armed neutrality act as

Nevertheless, so all-encompassing and durable an importance was not the destiny of the convention. The Empress of Russia herself abandoned it with regard to England in order to secure free action in Poland;<sup>1</sup> and then in the face of the convention of March 27, 1794, concluded by the pressure of the Powers allied against France,<sup>2</sup> for the defense of the freedom of neutral commerce and navigation, Denmark-Norway and Sweden did not invoke the armed neutrality, but returned to the earlier convention of neutrality, concluded between them in 1756,<sup>3</sup> and only appealed to the treaties and the generally accepted principles of international law.

On the other hand, upon the initiative of Emperor Paul, the armed neutrality was renewed between Denmark-Norway, Sweden and Russia, December 16, 1800;<sup>4</sup> Prussia acceded to it April 2, 1801. But in the meantime the situation had changed; England both could and would protest against the adopted "new code of maritime laws";<sup>5</sup> and to assert the heretofore prevailing maritime law, she answered it immediately by placing an embargo upon and by seizing Russian, Swedish and Danish-Norwegian ships, as well as by dispatching a fleet against Copenhagen in the roadway of which port a battle was fought, after which Denmark concluded a truce with England on the ninth day of the same month, in virtue of which accession to the armed neutrality should be withheld in so far as Denmark-Norway was concerned, while the truce remained in force. Thereafter a new convention was entered into by Russia and England, June 17, 1801, to which new articles were added on October 20 of the same year. Denmark-Norway joined in this convention on October 23, 1801. As the result of this, all the main principles of the armed neutrality were either altogether abandoned or weakened.

By the manifesto of November 7, 1807, Russia once more recognized the basic principles of the armed neutrality, but only to forsake them anew, a short time after, with regard to England;<sup>6</sup> on the other hand, Denmark still persisted in making her own the principle "free ship,

"the immutable rule of their own conduct and to avail themselves of it on every occasion as embodying laws and stipulations worthy of a distinguished rank in the code of humanity."

<sup>1</sup>E. Holm, vol. 1, p. 63.

<sup>2</sup>*Post*, p. 440; E. Holm, vol. 1, p. 95.

<sup>3</sup>P. Vedel, p. 34; E. Holm, vol. 1, pp. 96, 99.

<sup>4</sup>*Post*, pp. 531, 537; E. Holm, vol. 2, p. 344.

<sup>5</sup>Godchot, p. 132.

<sup>6</sup>Holtzendorff, vol. 4, p. 630.

free goods" as an unalterable basic principle;<sup>1</sup> in the war against England;<sup>2</sup> and Germany.<sup>3</sup> During the Crimean War, England gave in for the first time, and the clause was generally accepted under the Paris Declaration of April 16, 1856.<sup>4</sup>

While therefore the armed neutrality established the principle "free ship, free goods," it did not, on the other hand, consider the fate which might befall neutral goods carried in enemy ship which according to the *Consolato del Mare* should be free. This omission was a natural consequence of the fact that the settlement of this matter was of less concern to the neutral Powers which, above all things, would protect in time of war, the navigation of their subjects. Inasmuch as neutral subjects, after the outbreak of war, would of course not ship their goods by enemy ship, the question was in fact only of interest with regard to the neutral goods which, before the outbreak of the war, were loaded on ships belonging to the subject of a belligerent Power, especially in case the war had been begun without a previous declaration of war; though in regard to this question, many a treaty, for instance, the Utrecht treaty, Article 27, established an exception to the advantage of such neutral goods. The Anglo-American law clung to the aforementioned rule of the *Consolato del Mare* as common law;<sup>5</sup> while the French law upheld the reverse rule which, in consequence, is likewise incorporated in the French treaties, for instance, in the Utrecht treaty of 1713 between France, England and Holland;<sup>6</sup> and of August 23, 1742, Article 28. In the war with England, Denmark clung likewise to the rule "unfree ship, unfree goods";<sup>7</sup> and in the war against the German alliance, but only in case neutral goods had been placed on board enemy ships after the time when a declared and effective blockade may with certainty be accepted as having been known at the place

<sup>1</sup>See treaty with Prussia of 1818, Article 17.

<sup>2</sup>Rescript of November 4, 1807; Regulations of March 28, 1910, Article 8.

<sup>3</sup>Regulations of May 1, 1848, Article 11, b.

<sup>4</sup>See treaty with Venezuela of December 19, 1862, Article 16, by which England accepted it in exchange for the abolition of privateering. Nor did the Powers which did not accede to the Declaration (North America, Spain and Mexico) oppose it, but they were against the abolition of privateering if along with this the inviolability of private property on the seas was not recognized. Since 1799 North America had vigorously championed the recognition of the clause in question. See Gessner, pp. 56, 67; *Revue générale de droit international public*, vol. 5, p. 762; *documents*, pp. 10, 14.

<sup>5</sup>See treaty of July 11, 1670, Article 20.

<sup>6</sup>Gessner, p. 276; with regard to Denmark, see treaty with France of 1663; Redtz, p. 114

<sup>7</sup>Regulations of March 28, 1810, Article 9

of loading.<sup>1</sup> The Paris Declaration of April 16, 1856, Rule 3, sets forth that "neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag." The clause is likewise followed by the Powers which have not formally joined in the Declaration.<sup>2</sup> The general rule is therefore, that the flag protects the goods, excepting war contraband, but does not confiscate it.

An exception is, however, made to the "free ship, free goods, and unfree ship, free goods" clause established by the Paris Declaration; this is in reference to war contraband (*contrebande de guerre, contrebande militaire*),<sup>3</sup> or as this can in a general way be expressed: necessities of war. These may not be transported from a neutral to a belligerent land, because help may not be extended by a neutral land for the conduct of the war, with the general reservation, however, that in this respect the neutral State incur no obligation of vigilance and punishment; except to see to it that the belligerent Power is given authority, within certain limits, to exercise itself the vindication of justice with regard to the individuals guilty of the violation of the law of nations.

While in theory and in practice there is a fundamental agreement in the sphere of international law, there are, on the other hand, difficulties as to the limitation of the concept "contraband." In former times efforts were made to clear up the difficulties in the matter through conventional adjustments; as for instance, in the Utrecht treaty of 1713; in the neutrality treaty of December 16, 1800, Article 2, and in others.<sup>4</sup> Such a definition of limitation is also contained in the treaty with England of July 11, 1670, Article 5, to the effect that the contracting States would mutually neither procure, nor permit their subjects to procure soldiers, weapons, ships or anything else *which might be serviceable or necessary for war purposes*. These last words, in the meanwhile, were being interpreted in the most unwarrantable manner in the practice of the English prize courts;<sup>5</sup> in 1779, salted meats were

<sup>1</sup>Regulations of May 1, 1848, § 6a.

<sup>2</sup>*Revue générale de droit international public*, vol. 5, pp. 760-761.

<sup>3</sup>Marquardsen, p. 32.

<sup>4</sup>R. Kleen, p. 17; cf. treaty with France, 1663; Reedtz, p. 114; and the treaty of August 23, 1742, Articles 26-27, which defined the concept both positively and negatively; the treaty with Holland of June 15, 1701, Article 13; with Russia of October 19, 1782, Article 21; with Prussia of June 17, 1818, Article 21; with Brazil of April 26, 1828, Article 10; and with the Dominican Republic of July 26, 1852, Article 13.

<sup>5</sup>P. Vedel, p. 114.

even declared to be contraband.<sup>1</sup> This ruling so stirred A. P. Bernstorff that he had an "earnest" conversation with the English Ambassador, with the result that, under the pressure of the circumstances, England proposed a thorough examination of the treaty of July 11, 1670, which, upon the suggestion of Bernstorff was confined to a revision of the provision in Article 3 in respect of contraband. The negotiations led to the agreement of July 4, 1780, which authentically interpreted the said provision. Since the neutrality act of July 9, 1780, Article 3, made the provision regarding war contraband dependent upon the existing treaties, among which was the treaty of July 11, 1670, whose Article 3 is interpreted in the agreement to the advantage of Denmark with regard to the practice of the English maritime courts, the agreement was in no way in conflict with the neutrality act; but Guldberg availed himself of its conclusion to cause the downfall of Bernstorff.<sup>2</sup>

**NYS:** *Le Droit International, les Principes, les Théories, les Faits.*  
New edition. Brussels, 1912.

Ernest Nys. Contemporary Belgian publicist; born in 1851; professor of international law at the University of Brussels; member of the Institute of International Law; member of the permanent court of arbitration. He is the author of many works on special branches of the subject of international law and is a frequent contributor to the periodicals. Among his numerous works, in addition to the above systematic treatise, the first edition of which appeared in 1904-06, may be mentioned *Le droit de la guerre et les précurseurs de Grotius*, 1882, and *Les origines du droit international*, 1894. The Anglo-American interpretation of international law by courts and jurists has been one of his special fields of study, and he is well known as the French translator of Westlake and Lorimer.

*Volume 3, page 586.*—We have recalled how, on March 17, 1693, Denmark and Sweden signed a treaty, which is perhaps the first example of a league to assert the rights of neutrality. In 1780 there were concluded between Russia, Denmark, and Sweden conventions likewise intended to uphold the rights of non-belligerents against the

<sup>1</sup>*Historisk Tidsskrift*, III-5, p. 121; J. Schovelin, p. 214.

<sup>2</sup>*Historisk Tidsskrift*, III-5, p. 119; Aage Friis, p. 213.

pretensions of belligerents, to which conventions a number of maritime States acceded. History calls this agreement of 1780 "the armed neutrality league."

The Declaration of Independence of the English Colonies in America is dated July 4, 1776. On February 6, 1778, Louis XVI, King of France, who had already authorized his subjects to carry munitions of war to the Americans, formally recognized the United States as an independent nation and concluded with them a real treaty of alliance in the form of a treaty of amity and commerce. On March 15, 1778, the French Ambassador informed the Court of London of the signing of the treaty. This was the signal for war. The family pact signed at Paris on August 15, 1761, between the King of France and the King of Spain, binding both the reigning sovereigns and their descendants and heirs, was destined to draw Spain into the hostilities. Charles III vainly endeavored to play the part of mediator; on June 16, 1779, he was forced to make war on Great Britain.

Spain and Great Britain put into operation the most rigorous measures with regard to neutrals on the sea. "Great Britain," says a writer, "who was the most directly interested in the argument, regarding the Americans as rebels, claimed the right to prohibit neutral Powers to have any commercial intercourse with her insurgent colonies. English admiralty judges—and the most formidable opponent of the rights of neutrals among them was Sir James Marriott—applied in the matter of blockade and contraband of war theories that were very elastic and fatal to neutral commerce. The privateers of Great Britain, feeling assured that they would very seldom, not to say never, be condemned to pay expenses, still less damages, became the scourge of neutral commerce."<sup>1</sup> In the treaty which she had concluded with the United States on February 6, 1778, France had recognized the inviolability of a neutral flag, and if she had not in her regulations of July 26, 1778, abandoned the traditional principles of her marine legislation, she had tempered them with moderation.

It has not yet been definitely ascertained whether the credit of having conceived the idea of solemnly declaring the rights of neutrals against unjust pretensions belongs to Catherine II, Empress of Russia, to Charles Gravier de Vergennes, Secretary of State of Louis XVI of

<sup>1</sup>Ch. de Boeck, *De la propriété privée ennemie sous pavillon ennemi*, p. 57.



France, or to Andrew von Bernstorff, Minister of Charles VII of Denmark. Justice requires us to divide the honor, but it is proper to call attention to the part played by Vergennes. "The union of neutrals was his work," says a writer, "and he succeeded in formulating a masterly conception, which brought forth only beneficial results. The Secretary of State had conceived that measure even before the signing of the treaty of alliance with America. His object was to deprive the English of the mighty power which the sovereign possession of the sea assured to them. Holland, Sweden, Denmark, Russia were so situated geographically that they could enjoy, like England, the advantages of the sea; but between all these countries and England there were strong ties, either close political ties or those that were almost as irresistible, created by the fear of displeasing the harsh and vindictive Power which the downfall of France had for twenty years made mistress of Europe. M. de Vergennes was too well aware of this situation to think of attacking it from the front. His economic sense and the ideas that it gives enlightened the politician in him. . . . He perceived the new strength which the doctrine that the sea belonged to everybody and to no one, and that it was the right of neutrals to live under this law, would have in drawing these countries together."<sup>1</sup> The author whom we have just quoted shows how the injury to her interests finally prevailed with Catherine II over the temptations with which Great Britain was luring her Court to bring her over to its side and how Count Panin, the Empress's Chancellor, seized this occasion to attach his sovereign to the doctrine of France. "Catherine II," he writes, "addressed to the belligerent Courts of Europe the declaration, for which Panin, the Prime Minister, has, not without reason, received the praise of history, but it is proper to mention the fact that M. de Vergennes and the Government of Louis XVI had laid down the doctrine and practically dictated its terms."<sup>2</sup>

Without attempting to write the history of the armed neutrality, let us recall certain facts in connection with it.<sup>3</sup>

The merchant marine of Russia was undeveloped and the business of its northern provinces was practically in the hands of the English.

<sup>1</sup>Henri Doniol, *Histoire de la participation de la France à l'établissement des Etats-Unis d'Amérique.—Correspondance diplomatique et documents* (1888), vol. 3, p. 702.

<sup>2</sup>*Ibid.*, vol. 4, p. 436.

<sup>3</sup>The Cambridge Modern History, vol. 9 (1906), ch. 2, "The Armed Neutrality" by T. A. Walker and H. W. Wilson.

In 1778 the United States endeavored to destroy this source of wealth of its enemy, and in the summer of that year there appeared in the northern seas an American privateer, which inflicted severe damage upon the vessels that frequented the port of Archangel. In the month of August the Russian Government, seeking a way to put an end to these abuses, entered into negotiations with Denmark. The problem confronting the Court of St. Petersburg was to protect the merchant marine of one of the belligerent States, and it proposed that its coasts should be patrolled by a fleet to be furnished by Denmark and Russia. Denmark, who had profited by the transportation business of France and who desired recognition of the protective maxims of neutrality, took a different view of the matter. Sweden, whose interests were identical with those of Denmark, took part in the negotiations.

No immediate result was obtained, but toward the end of 1779 new developments brought about further negotiations between the Courts of St. Petersburg and Copenhagen. A Spanish cruiser seized off Gibraltar, which was blockaded by the Spaniards, the Dutch vessel *Concordia*, which a merchant of Archangel, on half shares with a Dutch merchant, had loaded with grain, and the Prize Court at Cadiz had confirmed the prize. Russia protested. The Spanish royal order of July 10, 1777, simply required the searching of neutral vessels that passed Gibraltar and authorized the capture only of vessels which violated the blockade. The Court of St. Petersburg therefore demanded reparation for the act and the withdrawal by Spain of the ordinance it had published concerning the Straits of Gibraltar. A rescript to this effect was sent on January 19, 1780, to the Russian Envoy at Madrid, and, since four vessels belonging to a Russian merchant had just sailed from Russia, with a Russian cargo, bound for Marseilles, the Government requested that they should be protected. At that very moment St. Petersburg learned that another Russian ship, the *St. Nicholas*, had met with the same fate as the *Concordia*. It was laden with wheat for Malaga and Leghorn and had been seized and taken to Cadiz.

It was then that the Empress of Russia decided upon further diplomatic action. She determined to persuade Denmark and Sweden to back up her efforts, to invite the United Provinces and Portugal to adhere to a common policy with them, and, finally, to draw up a declaration on the principles of the freedom of neutral commerce, which should be submitted to the belligerents.

As a matter of fact, the policy of the French Government triumphed; and the adoption of the program drawn up by Catherine II was to result in the complete isolation of Great Britain.

The Russian Government's declaration was dated February 27/March 9, 1780. It sets forth the principles which are "coincident with the primitive right of nations which every people may reclaim, and which the belligerent Powers can not invalidate without violating the laws of neutrality, and without disavowing the maxims they have adopted in the different treaties and public engagements."

According to the declaration, the principles may be reduced to the following points:

(1) That neutral ships may freely sail from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the Powers at war are free on board neutral vessels, with the exception of contraband.

(3) That the Russian Government, in the matter of determining what constitutes contraband, holds to the provisions of the treaty of June 20, 1766, between Russia and Great Britain, which provisions it extends to all the Powers at war. With the exception of saltpeter, sulphur, saddles and bridles, the articles of contraband enumerated in the treaty were specially designed for use in war. It was stipulated that when a neutral ship carried such articles, the quantity of munitions required for its own needs would be exempt from seizure.

(4) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power has stationed its war-ships sufficiently near to make access thereto clearly dangerous.

(5) That these principles shall constitute the rule in proceedings and judgments as to the legality of prizes.

This declaration was communicated on February 28/March 10, 1780, to the representatives of the neutral States accredited to the Court of St. Petersburg. and the envoys of Denmark, Sweden, the United Provinces, and Portugal gave the Russian Government the most friendly assurances.

To crown this declaration with success, armed neutrality had to follow. This had been foreseen, and on February 27 instructions had been forwarded at the same time as the declaration to the Russian Ministers accredited to foreign Governments. These instructions laid stress upon the necessity for a vast league, which would employ

force, if there were need, to bring about respect for the principles set forth, and went on to say that it was the desire of the Empress to have these new maxims made binding upon all nations, when peace should be concluded.<sup>1</sup>

Among the neutral nations, Denmark seemed to be the surest and steadiest support. Sweden was suspected of too friendly leanings toward France. The United Provinces, a prey to internal dissensions, were playing a waning part in European affairs; but the principles proclaimed by Catherine II were of the utmost importance to them, because the Dutch were the great ocean carriers. The attitude of the other countries was, on the whole, of little consequence.

The rescript addressed to the Russian Envoy at Copenhagen instructed him to announce to the Court of Denmark that, following its example of the preceding year, the Russian Government would send in the summer a fleet to protect commerce in the northern seas, and to urge that Court to take part in this enterprise. It laid stress on the neutralization of the Baltic, pointed out the advisability of both Governments forming fleets, and called attention to the fact that the principles set forth in the declaration were borrowed from Danish diplomacy. The Court of Copenhagen was invited to adhere by a formal treaty, to be drawn up in such terms as to permit other States to subscribe to it; separate articles were to settle the points which concerned only the two countries, and the Danish Government was not only to address to its Ministers at Paris, London, and Madrid a note in accordance with the Russian declaration, but also to take steps with a view to obtaining the support of Sweden, Portugal, and the United Provinces. Similar instructions were given to the Russian Envoy at Stockholm.

The Russian Ambassadors at London and at Madrid received communications, in which the step taken by the Empress was described as "impartial and based upon the natural law." The Court of St. Petersburg considered the Americans as rebels; it had no interest in them whatever.

The declaration was officially communicated to the envoys of the belligerents at St. Petersburg. The representative of France replied that the principles of the Empress were in accord with the intentions of his Government. The Minister of Spain confirmed the promise

<sup>1</sup>F. de Martens, *Recueil des traités et conventions conclus par la Russie avec les puissances étrangères*, vol. 2, p. 120.

made by his country to satisfy the demands of Russia with regard to the injuries suffered by its subjects. The reply of the English Minister stated that lawful neutral commerce would be respected by Great Britain, and shortly after, in a note handed to the Chancellor, the representative of Great Britain gave assurance that his Government was conducting itself in accordance with the principles of the law of nations and the stipulations of treaties. The note asserted that wherever there had been a question as to the nature of the cargo Great Britain had indemnified the owners.

The Cabinets of the belligerent countries likewise replied.

The Court of London invoked the law of nations, and set up against the declaration the system which it was following. The despatch was in very general terms.

France declared itself to be in accord with Russia. "In the same degree," says a writer, "in which the Russian declaration of March 9 had received but a cool welcome in England, in France the principles which it laid down were warmly applauded. When it reached Versailles, there was an outburst of joy."<sup>1</sup>

The Spanish note stated that the measures of the Spanish Government, against which Russia had taken exception, were the result of Great Britain's attitude. The Court of Spain rallied to the support of the views held by the Empress, the application of which that Court itself had demanded, and it was its intention to respect them.

The negotiations with Denmark were not long in producing results. Bernstorff had at the start interposed certain objections, the safest way, in his opinion, being the conclusion of a Russo-Danish alliance. Nevertheless an agreement was reached.

On July 8 Denmark made a declaration similar to the Russian declaration, and on July 9, 1780, there was signed at Copenhagen a maritime convention for the maintenance of the principles proclaimed in the double declaration. The two States agreed to equip a certain number of war-ships, which were to act in concert, in case of need, for the protection of the commerce of the contracting Parties. It was decided that, if either or both of the signatories were disturbed or molested as a result of the convention, the two Governments should make common cause. Separate articles proclaimed the neutrality of the Baltic and the desire of restoring peace between the belligerents.

<sup>1</sup>P. Fauchille, *La diplomatie française et la ligue des neutres de 1780 (1776-1783)*, 1893, p. 375.

It was stipulated that an effort should be made to the end that the system of neutrality might serve as the basis for a universal code, in which should be laid down the rules to be followed by all peoples in time of naval warfare.

On July 21 Sweden made a declaration similar to the declarations of Russia and Denmark, and on the same day a convention was signed at St. Petersburg between Russia and Sweden. It determined, in addition, the nature of contraband of war, and secret articles contained the stipulation with regard to the Baltic.

Denmark acceded to this convention as a principal party. On July 9 Sweden likewise gave its assent to the convention. The Court of Russia addressed a note to the belligerent Powers, informing them of the double accession.

On November 30, 1780, the States General of the United Provinces sent their adhesion to the league, but the resolution had not been approved by all the Provinces and, when the convention was on the point of being signed, the country was drawn into the war against Great Britain. The United Provinces called upon the northern Powers to come to their aid, as stipulated in the armed neutrality agreement; but, as the rupture between Great Britain and the United Provinces had taken place before the accession of the United Provinces and as the result of causes foreign to the objects of the neutrality alliance, their appeal was refused.

On May 8, 1781, Prussia guaranteed the system of neutrality. Austria was, in turn, invited to adhere. Joseph II and Count von Kaunitz considered the formality as superfluous and ill-timed. As a matter of fact, they were displeased because the Empress had addressed the King of Prussia first. The Emperor's interest to maintain the Russian alliance dictated his conduct. He adhered, not by a formal treaty, but by an exchange of acts signed by the two Sovereigns, the one, an act of accession, the other, an act of acceptance. The exchange of these four documents took place on October 19, 1781.<sup>1</sup> Portugal acceded by the treaty of St. Petersburg, dated July 13, 1782; the Kingdom of the Two Sicilies by the convention of February 10, 1783.

France had replied on July 27, 1780, that the Russo-Danish measure was "the greatest benefit that the present war has been able to

<sup>1</sup>October 30, 1781, new style. See *post*, pp. 403-409.

bring about for Europe." The reply of Spain is not known. As we have seen, the Congress of the United States had not received an official communication; but, on the advice of Vergennes, it gave its support to the principles proclaimed and declared that its Ministers to foreign countries should be authorized to accede, if they were asked to.<sup>1</sup> Great Britain made protestations of friendship, and in view of the turn affairs had taken it recommended its cruisers and privateers to act with discrimination.

The peace of Versailles of 1783 again put into effect the stipulations of the treaties of commerce signed at Utrecht in 1713. The maritime and commercial convention concluded between Great Britain and France renewed the same provisions. Taken in connection with the league of neutrals, this was a significant fact, but it should be remarked that the treaty concluded between Great Britain and the United Provinces contained no similar stipulation, so that the former of these two countries was in a position to consider the maxims favoring neutrals as exceptional in common law.

While asserting the freedom from seizure of vessels under a neutral flag, as well as their enemy cargo, with the exception of contraband of war, the armed neutrality league of 1780 and the treaties which followed it were silent as to the status of neutral goods under an enemy flag. This omission was intentional; the northern Powers feared lest they might appear to be demanding too much. However, it is none the less true that, all things considered, the league produced practical results. It had boldly brought to the fore the question of reforming international maritime law, and it is no exaggeration to regard it as the line of demarcation between two distinct epochs in the development of the law of nations.<sup>2</sup> The effect was particularly conspicuous in the field of science, where the movement favoring neutrals has become much more marked since the declaration.

## VII

During the wars of the Revolution and of the Empire belligerents disregarded at will the rights of neutrals. In 1793 Great Britain, Prussia, and Russia made common cause in prohibiting the transportation of wheat and provisions to France, and France authorized its

<sup>1</sup>H. Doniol, *Histoire de la participation de la France à l'établissement des Etats-Unis*, vol. 4, p. 437.

<sup>2</sup>L. Gessner, *Les droits des neutres sur mer*, 2d ed., 1875, Preface, p. vi.

sailors to seize neutral vessels laden with food for the enemy or enemy goods.<sup>1</sup> Great Britain and France soon took still harsher measures. The Orders in Council and the decisions of the admiralty judges of Great Britain went so far as to deny to neutrals the right to carry any products other than those of their own country; the laws of France and the judgments of its prize courts declared lawful prize vessels loaded wholly or partially with goods emanating from Great Britain or its possessions, no matter who was the owner of the goods, and the decree of August 29, 1798, even provided that any neutral subject found in the crew of an enemy war or merchant ship would be treated as a pirate.<sup>2</sup>

This was a blow to Denmark and Sweden especially. These two countries agreed to convoy their merchant ships. Great Britain claimed the right to search vessels sailing under convoy. It was then that Paul I of Russia, who had withdrawn from his alliances with Austria and Great Britain, issued his declaration of August 15/27, 1800, inviting Sweden, Prussia, and Denmark to conclude a convention for the reestablishment of the rights of neutrality. On December 16 two treaties were concluded at St. Petersburg, one between Russia and Sweden, and the other between Russia and Denmark. On the 18th a treaty was concluded between Russia and Prussia. Each of the three Courts acceded to the conventions of the other Courts with Russia, and the treaties of 1800 thus formed a genuine quadruple alliance.

Article 3 of the treaties set forth the "general principles of the rights of neutrals." These principles were as follows:

(1) Every vessel may sail freely from port to port and along the coasts of the nations at war.

(2) Effects belonging to the subjects of the Powers at war are free on board neutral vessels, with the exception of articles of contraband.

(3) A port is considered to be blockaded when access thereto is clearly dangerous as the result of the measures taken by one of the belligerent Powers by placing its war-ships nearby. Neutrals are not permitted to enter the port.

(4) Neutral vessels may not be arrested except for just cause

<sup>1</sup>C. de Martens, *Nouvelles causes célèbres du droit des gens*, vol. 2, p. 179.

<sup>2</sup>Ch. de Boeck, *De la propriété privée ennemie sous pavillon ennemi*, p. 73.



and self-evident facts. They must be adjudicated without delay and by due process of law.

(5) The declaration of the commanding officer of the war-ship or war-ships accompanying merchant vessels that his convoy has no contraband goods on board must suffice and there is no occasion to search such vessels. The captains of war-ships shall receive the strictest orders to prevent trade in contraband goods. To ensure the execution of these provisions, the two Sovereigns shall equip proportionate numbers of vessels and frigates.

Articles 11 and 12 permitted other Powers to accede to the convention and provided that the measures taken should be brought to the knowledge of the belligerents. Great Britain retaliated with war, which was of short duration, for the death of Paul I caused a sudden change in Russian policy, and on June 17, 1801, the maritime convention of St. Petersburg was concluded between England and Russia.

The rules adopted were as follows:

(1) The vessels of neutral Powers may freely enter the ports and sail along the coasts of the nations at war.

(2) This freedom does not apply to contraband of war.

(3) The flag does not cover the goods; that is to say, the freedom of the neutral vessel does not extend to the enemy property with which it is laden.

(4) Raw materials or manufactured articles of the countries at war are not regarded as enemy property when they have become the property of subjects of neutral nations.

(5) Contraband goods are those that have been so designated by previous treaties, in conformity with the stipulations of the treaty of February 22, 1797. The two contracting Powers shall include under this head arms, projectiles, powder, saltpeter, sulphur, swordbelts, cartridge boxes, saddles and bridles. Provisions and wood for building are not considered contraband.

(6) No port shall be regarded as blockaded unless the attacking Power shall have stationed its ships sufficiently near to render access thereto clearly dangerous.

(7) The vessels of a neutral Power may not be arrested except for just cause and self-evident facts. They are adjudicated without delay, and the procedure shall be uniform, prompt, and legal.

Denmark and Sweden were forced to accede to this convention,

which laid down, among other things, the principles to be followed in the searching of merchant ships. The former of these States did so by the treaty of Moscow of October 23, 1801; the latter by the convention of St. Petersburg dated March 18/30, 1802.

In this way, by making concessions, which were, on the whole, rather slight, the London Cabinet secured recognition of two principles which it considered of great importance, namely, that the flag does not cover the goods and that vessels under convoy may be searched.

**PERELS:** *Manuel de Droit Maritime International*. Translated from the German and augmented by some new documents by L. Arendt. Paris, 1884.

Ferdinand Paul Perels. German publicist; born in 1836; died in 1903. Legal adviser to the admiralty, 1877, privy councillor, 1900, honorary professor at the University of Berlin, doctor of law, member of the Institute of International Law. Perels devoted himself to the special study of public maritime law, and for this reason was well fitted to occupy the high positions in the administration of the German Navy to which he rapidly attained. In 1892 he was elected to the Reichstag and there took an important part in the movement to increase the German fleet and in the administration of that fleet.

The two principal publications of Perels are *Das internationale öffentliche Seerecht der Gegenwart*, 1882, second edition, 1903, and *Das allgemeine öffentliche Seerecht im Deutschen Reiche*, 1884. He has also written numerous monographs bearing on maritime law.

#### CONVOYS

*Page 325, § 56.*—I. In the large sense of the word, convoying means escorting transport ships by armed force. Convoys of merchant vessels protected by war vessels are of great importance. At the beginning, they had for their object to protect commerce in case of piracy or of perils in navigation. It is only in modern times that the use of convoys has been extended to neutral navigation.

In placing neutral vessels under convoy, guaranty is thereby given to the belligerents that there is no war contraband on board the con-

voyed vessels, and that these are not making for prohibited zones. When such guaranty is met with, search of the vessels is no longer necessary. This is the understanding that was reached more than two centuries ago. Still, it has never been universally admitted that convoyed vessels were exempt from search; the British Government, especially, has frequently refused to admit this privilege.<sup>1</sup>

<sup>1</sup>In 1779, Danish vessels in convoy were captured by English cruisers, because the commander of the convoy had offered resistance to search. This fact led to a decision of the British court of admiralty in which it is declared that the convoy exempts from search only in those cases provided for in treaties. During the following year, the seizure of the Danish frigate *Freja*, which had also opposed the search of the vessels convoyed by her, led to long negotiations. The British Government decided officially to send a special commissary to Copenhagen, notifying the Danish Government at the same time that a fleet would accompany the delegate, in order to give greater importance to his representations, and also to prepare a way for such explanations as might perhaps arise from the extreme measures upon which the King of England would only decide with great repugnance. In the presence of sixteen English war vessels, anchored in the Sound, the Danish Government had to yield and to renounce the convoy of merchant vessels. At this time, a dispute with Sweden gave the English admiralty court an opportunity to proclaim the principles which it followed upon this matter. A certain number of Swedish war vessels sailing under the convoy of the frigate *Ulla Fersen*, were seized by English cruisers in consequence of the opposition to search made by Baron Cederstrom who commanded the convoy. In the decision rendered by the admiralty court on June 11, 1799, it is declared:

Every belligerent nation is entitled to search vessels on the high seas, and the agents of the authority of the neutral country who interpose by force in any manner whatever, can do nothing to change this right to which cruisers are entitled; interference on their part would resemble an opposition of illegal violence to legal right. If by special covenant some Powers have stipulated that the presence of one of their war-ships should be regarded as guaranty that the merchant vessels have nothing on board contrary to the duties of good friendship, the other Governments can not thereby be compelled to renounce their right of visit and search

The instructions received by Captain Cederström, on May 17, 1798, were couched in quite the contrary sense; they read as follows:

In case the commander should meet one or several war-ships, or a fleet of a foreign nation, he must conduct himself with all possible courtesy and not give any pretext for hostile action; but if he should meet an enemy war-ship, desiring to ascertain whether or not the frigate belongs to the King of Sweden, the commander shall by salute and by the hoisting of his flag affirm that such is the case; if the enemy vessel should desire to search the convoyed merchant vessels, he must offer resistance as much as possible, and if, in spite of the friendly representations of the commander, the merchant vessels were to be attacked, he must oppose force with force.

Captain Cederstrom had sent out an armed boat to take an English officer who was on one of the captured vessels and had him brought on board his frigate; but in the presence of superior English forces, he had been compelled to release him. He was recalled to Sweden for this act; he was brought before a war council and condemned to be shot; pardoned at the very moment when he was to be executed, he was afterwards confined to a fortress.

II. The exercise of the right of search with regard to convoyed vessels has been subject to certain rules which require on the part of the chief of the convoy, the fulfillment of certain conditions intended to give the belligerents the necessary guaranties.<sup>1</sup>

Thus, the commander of the convoy, before starting upon his voyage, must assure himself of the innocent character of the cargoes and of the destination of the vessels to be convoyed; he must subject the papers to a careful examination and ascertain that there is no war contraband on board.

III. When special regulations or conventions<sup>2</sup> have not defined the exercise of the right of search of the vessels under convoy, the following principles may be taken as a guide.

1. The consideration due to the neutral State and to its flag demands faith in the formal declaration of the officer placed in charge of the convoy; this consideration would be offended if open defiance

<sup>1</sup>The armed neutrality of the northern Powers, 1800, adopted the following rules (Article 3) :

That the declaration of the commanding officer of the vessel or vessels of the royal or imperial navy, which accompanies the convoy of one or more merchant ships<sup>s</sup> that his convoy carries no contraband merchandise, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers, hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralities and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

The treaty between Russia and England of June 17, 1801, regulates this matter in detail, but from the point of view of the illegality of the right of search in such case see its Article 4, *post*, p. 598.

The Austrian regulation contains very detailed directions with regard to the formation and conduct of convoys (III, § 117).

<sup>2</sup>The Prussian prize rules in their Article 12, merely prescribed that neutral vessels under the convoy of a war-ship shall not be subjected to search, and that the declaration of the chief of the convoy shall suffice, provided he affirms that the papers of the convoyed vessels are in proper form, and that there is no war contraband on board; the Austrian rules in this respect are the same (III, 1463).

were shown toward this commander who is the representative of a friendly Power.<sup>1</sup>

2. In principle, the exercise of the right of search shall be therefore confined to receiving from the commander of the convoy a declaration upon the following points:

(a) He shall affirm that the vessels in question belong really to the convoy.

<sup>1</sup>See Ortolan (vol. 2, p. 272), who states the following: "It being well known that the neutral Governments are physically unable to prevent entirely the fraudulent commerce of their subjects whom the lure of gain leads frequently to illicit acts, therefore the merchant ships when sailing alone present no guaranty of their nature, until a thorough examination of them has been made. The belligerents can only by themselves carry out such an examination, by search of the ship's papers, and of the cargo, as the case may be. But such search is unnecessary if they receive as a guaranty the authentic attestation of the Government to whose subjects such vessels may belong. Now, the commander of a war vessel represents his Government. When by himself he has ascertained that the vessels of his nation placed under his escort are sailing in due form, that they do not and that they must not violate any one of the duties of neutrality, his testimony must in such case be sufficient, and can not be put in doubt without offending the loyalty and the honor of such Government. From the point of view of the surety which the belligerent demands, such testimony has even a higher value than an examination of the ship's papers which the belligerent himself might make.

"When the merchant vessel navigates without supervision, the papers which are on its board to show its neutrality and the destination of its cargo may be false, and the belligerent unable to convince himself thereof by evident proof; on the contrary, the commander of a convoy who is perfectly informed in advance of the slightest details in regard to the vessels placed under his escort, can be deceived neither as to their character nor their destination."

It may not be said that deceit is impossible. Bluntschli (in regard to Article 825), states in reference thereto: "The belligerent Powers must cause their rights and their interests to be respected. It may therefore not be demanded of them that, upon the testimony of the neutral State, they should absolutely renounce their right to search suspected vessels. It is possible that the neutral State itself may have been deceived or that it may not have exercised sufficient care in the examination of the goods taken on board. It may also be possible that the belligerent Power and the neutral State be not agreed upon the meaning to be given to the word contraband, and that the former regard as contraband that which the latter may not believe to be forbidden. In this matter, an effort must be made to conciliate differing opinions and different interests."—Geffcken (in reference to § 170 of Heffter) likewise states: "A convoy does not necessarily mean inviolability, because the chief of the convoy may have been deceived, and also because opinions may differ in regard to the nature of the goods."—The French instruction of March 31, 1854, likewise foresees the possibility of an error; Article 14 reads as follows: "You shall not search vessels under the convoy of an allied or neutral war vessel, and you shall confine yourself to calling upon the commander of the convoy for a list of the vessels placed under his protection, with the written declaration that they do not belong to the enemy and are not engaged in illicit commerce. If however you should have reason to suspect that the good faith of the commander of the convoy has been deceived, you would in such case communicate your suspicions to that officer who would alone proceed to the search of the suspected vessels."

(b) He shall state their nationality and their destination.

(c) He shall affirm that there is no war contraband on board.

The cruiser shall send an officer on board the convoying vessel to receive such declaration.

It is not rare to require, besides, the word of honor of the commander;<sup>1</sup> but it is not at all a general rule.<sup>2</sup>

3. If the called-for declaration is satisfactory all subsequent exercise of the right of search is allowed to lapse.

4. The search and the possible seizure are considered as legitimate:

(a) If the chief of the convoy refuses to make the requested declaration.

(b) If from this declaration there results that one or another vessel does not belong to the convoy.

(c) If a vessel is on the point of committing a violation of neutrality.

When circumstances make search necessary, it must be left free to the officer of the convoy to send along one of his own officers to be present at the search.

IV. Vessels which by their private authority have joined the convoy, are not entitled to privileged treatment; likewise those which by chance or which upon their own responsibility have separated from the convoy.<sup>3</sup>

V. If the convoying vessel has committed an abuse, the belligerent cruisers have the incontestable right to undertake rigorous search on board all the merchant vessels of this flag, without further paying heed to the convoy.

VI. Ancient practice permitted corsairs to exercise the right of search in the same manner as was done by the war vessels. Since

<sup>1</sup>For instance, in the treaty between the German Confederation of the North and Salvador, June 13, 1870, Article 21.

<sup>2</sup>De Negrin (§ 284) erroneously affirms the contrary.—The Russian Regulations of 1869 (§ 103), require a written affirmation or a signal.

<sup>3</sup>As long as they place themselves under the protection of the commander of the convoy, the captains of convoyed vessels must obey his orders especially in relation to the course of the convoy and the speed to be maintained. Communication between the vessels is maintained by means of the customary signals or by special signals to be determined. The *Queen's Regulations*, §§ 1930 *et seq.*, contain in this respect detailed prescriptions. The English law (27 and 28 Victoria, ch. 25, § 46), provides a fine of 500 pounds sterling and imprisonment for one year for any infraction of the orders of the commander of the convoy, as well as for separating, unauthorized, from the convoy. See also the Austrian prescriptions referred to hereinbefore.

the beginning of this century, this has no longer been allowed them, with reference to convoyed vessels. The armed neutrality of 1800 and the treaty between Great Britain and Russia of June 5/17, 1801, have formally abolished this former right of the corsairs.

Ortolan states<sup>1</sup> that there is no need in this matter to distinguish between war vessels and corsairs; in our judgment, he takes a wrong view in this matter, for the two kinds of vessels as we have elsewhere stated are of a different character, though both belong to the naval forces of the State. While the corsair acts only on the ground of gain to be obtained, public interest and the sentiment of military honor are to guide the commander of a war vessel. It seems therefore just that States which have refused to issue letters of mark, should in particular refuse to grant to the corsairs of foreign nations any right over the convoys which they form.

VII. May the right of search, in all its rigor, be exercised with regard to neutral vessels being under a convoy organized by a neutral Government other than their own? That will essentially depend upon the relations existing between this neutral State and the belligerents. From the point of view of right, the privilege of search can not be refused the belligerent, because the commander of the convoy is not in position to furnish the guaranties required with regard to the conduct of vessels other than those of his own nation.<sup>2</sup>

VIII. It is obvious that neutral vessels under enemy convoy are absolutely subject to search. But there is dispute as to whether the mere fact of navigating under the convoy of an enemy war vessel exposes the neutral vessel to being captured and confiscated legitimately. This question was discussed at the beginning of this century

<sup>1</sup>Vol. 2, p. 273.

<sup>2</sup>See also Ortolan, vol. 2, p. 275; Gessner, 2d ed., p. 326; de Negrin, § 284. Hautefeuille (*Histoire*, p. 449) says: "May the war vessels of a neutral nation take under their convoy vessels of foreign, but neutral nations? They undoubtedly may do so." It is evident there is nothing that is against such an act; but foreign war vessels may not be required to show the same consideration as that which they show toward neutral vessels under convoy of a war vessel of their own nation.—The Austrian Regulation (III, No. 1451) declares as follows: "The merchant vessels of a belligerent nation with which the monarchy maintains neutral relations, and the merchant vessels of other neutral States may not be taken in convoy by the war vessels of His Majesty, unless they have received superior orders or owing to special circumstances upon which an immediate detailed report should be made. The merchant vessels of an ally engaged in war must, on the contrary, in so far as convoys are concerned, be treated the same as those of the monarchy."—See also the *Queen's Regulations*, § 1936, which make also a distinction between the merchant vessels of an ally and those of a third neutral Power.

when in consequence of a Danish ordinance of 1810, war vessels of this country seized, on their return trip, numerous American merchant vessels which had traveled from America to England under enemy convoy, that is to say, under English convoy. The Danish prize tribunal condemned them; but after long negotiations the Government granted an indemnity to the Americans whose interests had been injured; it was, however, stipulated that this fact should not be regarded as a precedent.

In our judgment, the fact of placing itself under the protection of the flag of a belligerent constitutes on the part of the neutral vessel, an offense against the right of search incontestably belonging to the other belligerent; the exercise of such right being rendered thereby either more difficult or impossible, we find ourselves in the presence of an effective violation of neutrality and not simply of a mere presumption. We find it therefore not unjust that in such circumstances, abstraction being made of other violations of neutrality that might occur in the case, a vessel should be captured and declared legitimate prize.<sup>1</sup> Other writers think that the mere fact of navigating under the convoy of an enemy vessel can only serve as basis for a presumption of violation of neutrality.<sup>2</sup>

**PHILLIMORE:** *Commentaries upon International Law.* Third edition, London, 1885.

Sir Robert Joseph Phillimore. English publicist; born in 1810; died in 1885. Admitted as an advocate at Doctors' Commons in 1839, he was called to the bar at the Middle Temple in 1841, and soon distinguished himself as counsel before the admiralty, probate and divorce courts. In 1853 he entered Parliament as a member for Tavistock and held this position until 1857. He was successively appointed judge of the Cinque Ports, queen's counsel, advocate general to the admiralty, and judge of the court of arches. When the powers of

<sup>1</sup>See also Oke Manning, p. 369; Kaltenborn, vol. 2, pp. 467, 468; Jacobsen, *Seerecht*, pp. 140, 141.

<sup>2</sup>See Heffter, § 171; Ortolan, pp. 275 *et seq.*; Gessner, *op. cit.*, pp. 328-331. Wheaton (*Elements*, vol. 2, pp. 192 *et seq.*) maintains in principle the legitimacy of such convoy, and concedes only that in such case one may avail himself of a presumption of enemy nationality against the vessels composing the convoy and their cargo.



the admiralty court were transferred to the High Court of Justice he continued to sit as judge for the new admiralty, probate and divorce division until 1883.

Phillimore is well known among international lawyers for his authoritative four-volume treatise, *Commentaries upon International Law*, published 1854-1861, third edition 1879-1885.

*Volume 3, page 335.* CLXXXVI. The year 1780 opens a new chapter in the history of the intercourse of nations,—

*"Longa est injuria, longae*

*"Ambages, sed summa sequar fastigia rerum."*<sup>1</sup>

In 1780, an accident brought into the field an unexpected and remarkable champion of the new doctrine—a then semi-barbarous Power of gigantic dimensions, touching at one extremity the farthest bounds of civilization, but gradually developing at the other extremity forces and resources in the European hemisphere which made her opinion weigh heavily in the scale into which it was thrown. The vast Empire of Russia was governed at this time by Catherine II. Under her auspices arose the first of the associations known in history by the name of *the two armed neutralities*.

It is rather the province of the historian than of the jurist to trace the origin and lay bare the causes of this event. But it must be observed that the memoir of Count Goertz,<sup>2</sup> the diary of Lord Malmesbury, the records of De Flassan<sup>3</sup> and of Von Dohm,<sup>4</sup> establish, beyond the possibility of a reasonable doubt, three things respecting it. First, that it was the result of a cabinet intrigue (which meant nothing less than the welfare of nations), availing itself of an accident.<sup>5</sup> Secondly, that

<sup>1</sup>*Æn.* i, 341-2.

<sup>2</sup>*Mémoire sur la neutralité armée*, p. 104.

<sup>3</sup>*Histoire générale et raisonnée de la diplomatie française*, vol. 7, p. 266.

<sup>4</sup>*Denkwürdigkeiten meiner Zeit*, vol. 2, p. 100.

<sup>5</sup>"L'Impératrice Marie-Thérèse, s'extasiant sur le rare bonheur de Cathérine, tint au Baron de Breteuil un discours qui confirme ce que rapporte le Baron de Goertz. 'Il n'y a pas,' lui dit-elle, à l'occasion de la neutralité armée, 'il n'y a pas jusqu'à ses vues les plus mal combinées, qui ne tournent à son profit et à sa gloire; car vous savez sans doute que la déclaration qu'elle vient de faire pour sa neutralité maritime, avait d'abord été arrêtée dans les termes les plus favorables à l'Angleterre. Cet ouvrage avait été fait par la seule influence de M. le Prince Potemkin, et à l'insu de M. le Comte de Panin; et cette déclaration, inspirée par l'Angleterre, était au moment de paraître, lorsque M. de Panin, qui en a été instruit, a trouvé moyen de la faire entièrement changer, et de la tourner absolument en votre faveur.'"—De Flassan, vol. 7, p. 272, note (1).

originally the Empress had fully adopted and meant to carry into effect the principles of international law contended for by England. Thirdly, that to the last she never clearly understood what she had done, or why she had given offense to Great Britain.<sup>1</sup> Count Panin was Chancellor of the Empire; Prince Potemkin the reigning favorite of the Empress. England, in her war with her colonies, France, and Spain, sought aid in an alliance with Russia. Potemkin favored, Panin opposed it. The seizure of two Russian ships by Spain at this time incensed the Empress: Potemkin availed himself of her wrath to induce her to order the equipment of a fleet, destined to cooperate with England against Spain, if redress were denied. Panin discovered both that the fleet was ordered, and its destination. He saw in these facts, however, the opportunity of crushing his rival, and he seized it with great adroitness. He applauded the determination of the Empress, but artfully suggested that an occasion now presented itself to her of appearing in the magnificent character of the lawgiver of the seas, and the protectress of neutrals, and at the same time of avenging the injury to herself. The flattery was so specious and so well applied, that the Empress placed herself in the hands of her wily and successful courtier. Panin drew up a manifesto of neutral rights, and the Empress communicated it to France, Spain, and England.

Seldom has a more important event grown from a more despicable origin. It is not, perhaps, with any unnatural reluctance, that we hear in these days that Europe acquired for the first time, towards the end of the last century, an acquaintance with the true doctrines of international justice from a quarrel between the unprincipled courtiers of a vain, profligate woman, whom the inscrutable decrees of Providence had permitted to be the absolute sovereign of a half-civilized empire.

CLXXXVII. The propositions of the new Russian International Code were as follows:<sup>2</sup>

1. That neutral ships might freely trade from port to port, and upon the coasts of nations at war.
2. That the property of the subjects of belligerent Powers should be free on board neutral ships, excepting goods that were contraband.

<sup>1</sup>Professor Wurm (the author of many tracts on maritime law) tells us that Catherine said to Lord Malmesbury (18th December, 1783). "Mais quel mal vous fait cette *neutralité* armée, ou plutôt, *nullité* armée?"—*Die Politik der Seemächte*, p. 314. (Hamburg, 1855.)

<sup>2</sup>*Post*, p. 273.

3. That with regard to contraband goods, the Empress bound herself by what was contained in the Articles 10 and 11<sup>1</sup> of her treaty with Great Britain, extending these obligations to all belligerent Powers.

4. That to determine what characterizes a blockaded port, this term shall be confined to places where there is an evident danger in entering, from the arrangements of the Power which is attacking, with vessels stationary and sufficiently close.

5. That these principles shall serve for a rule in the proceedings and judgments on the legality of prizes.

CLXXXVIII. France, Spain, Holland, Denmark, Sweden, the two latter in direct violation of the faith of treaties, gave in their adherence to Russia. At a later period, Prussia and the Emperor of Germany joined the league. Still later, Portugal and the Two Sicilies acceded to the Russian confederacy.

CLXXXIX. As to France, we have seen what were the provisions of her treaty *seven months* before she joined the Russian league.

As to Spain, in the year 1780, *one month* before her accession, she had issued the severest ordinances against neutrals, ordering the seizure of vessels which carried enemies' *goods* or provisions.<sup>2</sup>

To Denmark and Sweden, Great Britain replied by a vain appeal to the faith of treaties. Yet how did the matter stand between England and Denmark?<sup>3</sup>

In 1670, a solemn treaty of commerce was concluded between England and Denmark, the third article of which contained the definition of contraband; but in which, however, the words, "other necessities for the use of war," were thought too indefinite. To remedy this, a convention was made to put the matter out of doubt, by an article to be substituted in the place of the other; by which contraband was declared to include the very subjects so often disputed,—ship-timber, tar, pitch, rosin, sheet-copper, hemp, sails, and cordage. This was signed on the 4th July, 1780. On the 8th was signed that declaration of armed

<sup>1</sup>L'Article XI du Traité de 1766 désigne les seuls objets suivans comme étant de contrebande: 'Les canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, poches à cartouches, selles et brides, au-delà de ce qui est nécessaire pour la provision du vaisseau.'—De Flassan, vol. 7, p. 273 (note 1).

<sup>2</sup>Martens, *Recueil*, vol. 4. p. 268. Ward, p. 163.

<sup>3</sup>Ward, p. 155, whose concise and clear statement I have transplanted into my text.

neutrality, which had long been concerting between its original members, and in which the King of Denmark declares that he understands nothing under contraband, except the articles specified in the third article of the treaty of 1670.

CXC. To Russia, Great Britain made answer as to the *general law*, that "His Majesty hath acted towards friendly and neutral Powers according to their own procedure respecting Great Britain, and conformably to the clearest principles generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeably to the tenor of his different engagements with other Powers, whose engagements have altered this primitive law, by mutual stipulations proportioned to the will and convenience of the contracting Parties." She added, "that precise orders had been given respecting the flag and commerce of Russia, according to the laws of nations and the tenor of our treaty of commerce; that it was to be presumed that no irregularity would happen, but that otherwise redress would be afforded by our courts of admiralty, judging according to the laws of nations, in so equitable a manner, that Her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses."<sup>1</sup>

CXCI. But the most remarkable fact connected with the armed neutrality of 1780 remains to be stated, namely, that *every one* of the Powers composing this hallowed league for the maintenance of international justice upon the principles of the Russian edict, departed from the obligation which they had contracted as *neutrals* as soon as they became *belligerents*, and returned without shame or hesitation to the practice of the ancient law.

In the meantime it must be borne in mind that, though this Russian convention professed to contain an exposition of the principles of universal justice, it took care to provide that its stipulations should be binding only during the present war; it held out, indeed, the prospect of future arrangements in time of peace, and Sweden was particularly anxious to propose a congress in which the question should be finally settled. We shall see what course she pursued a few years afterwards.

CXCII. The dispute between Great Britain and the Russian league was not arranged when the war was ended. But the treaty of Versailles, 1783, between Great Britain, France, and Spain, confirmed the

<sup>1</sup>*Post*, p. 282.

treaty of Utrecht, and therefore between these contracting Powers established the principle of "free ships free goods."

The treaty between Prussia and the United States of North America, 1785, stipulates that enemies' goods shall be free on board friends' ships, but *not* that friends' goods shall be seizable on board enemies' ships.<sup>1</sup> France and Holland renewed in 1785 the articles of the treaty of Utrecht,<sup>2</sup> which stipulated that *free ships make free goods*, and *enemies' ships enemies' goods*. In the same year, Austria and Russia<sup>3</sup> renewed the provisions of the armed neutrality on this subject.

In the great commercial treaty of 26th September, 1786, negotiated by Mr. Eden, under the auspices of Mr. Pitt, with France, Great Britain engaged that "free ships should make free goods, and enemies' ships enemies' goods."<sup>4</sup>

In the debate which took place in Parliament upon the preliminaries of this treaty, it was objected that they contained a recognition by Great Britain of the doctrines of the armed neutrality. To this it was answered that the provisions of this treaty were only intended to apply to a case, in itself improbable, that either of the contracting parties should be engaged in a maritime war, whilst the other should remain neutral, and that these provisions were not intended to furnish a general rule to be observed towards other nations.<sup>5</sup>

This authoritative interpretation of the treaty is remarkable, and important, and appears to have been entirely overlooked by those<sup>6</sup> who have cited the treaty as evidence that Great Britain intended to introduce the general principle of *free ships free goods* into the International Code of Maritime Law.

CXCIII. The United States of North America, the new Power which had firmly established itself before the treaty of Versailles was made in 1783, and which carried the doctrine of international law into a new hemisphere, incorporated the two maxims, *free ships free goods* and *enemies' ships enemies' goods*, into her treaties with Holland in 1782, with Sweden in 1783, and with Prussia in 1785.<sup>7</sup>

<sup>1</sup>Martens, vol. 4, p. 42.

<sup>2</sup>*Ibid.* 68.

<sup>3</sup>*Ibid.* 76.

<sup>4</sup>Articles 20, 29. Chalmers, vol. 1, pp. 530-536.

<sup>5</sup>*Parliamentary History of England*, vol. 26, p. 563.—*Speech of Lord Lansdowne, præsertim.*

<sup>6</sup>*Edinburgh Review* for July, 1854, p. 214

<sup>7</sup>Elliot's (*American*) *Diplomatic Code*, vol. 1, pp. 134-168, 334.

CXCIV. The benevolent and philosophical Franklin introduced into this last-mentioned treaty various stipulations, having for their object to mitigate the necessary horrors of war, abolishing privateering, protecting fishermen and unfortified cities, and providing for the good treatment of prisoners.<sup>1</sup> The interval between the two armed neutralities is still more remarkable for the appearance of two celebrated works on the rights and duties of neutrals by two Italian jurists, Galiani and Lampredi. Galiani was, as he tells us, ordered to write his book as fast as possible, to defend the conduct of the King of the Two Sicilies in adhering to the Russian league. He published his work at Naples in 1782.<sup>2</sup> In 1788, Lampredi published his work at Florence.<sup>3</sup> He expressed his conclusions, founded upon very learned premises, that there was no comparison between the relative importance of the rights of the belligerent and of the neutral, assuming them to be in collision upon the question of enemies' goods on board neutral ships. For what, after all (he says), is the injury sustained by the neutral from the capture of his vessel laden with enemies' goods, if his vessel be restored, and he, as the treaties and usage of nations require, be paid his freight? Merely the delay and the possible loss of a return voyage. On the other hand, if the right of the belligerent be foregone, the fatal consequence may ensue that the entire commerce of the enemy may be carried on under the neutral flag, and thus escape from capture, to the great injury of the belligerent, the main object of whose maritime warfare is to destroy the commercial resources and revenues of his enemy, the sinews of his naval power.

CXCV. It has been said that *all* the members of the armed neutrality abandoned, upon the very next opportunity of their becoming *belligerents*, the creed which they had sought to enforce by arms when *neutrals*. The forward zeal of Sweden in favor of this creed has been noticed. Let us now, having careful reference to dates, look at the conduct of those States.

The armed neutrality was in 1780. The peace of Versailles was in 1783. The next war, in which Sweden was a *belligerent*, happened in

<sup>1</sup>Wheaton's *Histoire*, p. 308.

<sup>2</sup>*Dei Doveri dei Principi neutrali verso i Principi guerreggianti, e di questi verso i Principi neutrali*. Napoli, 4to, 1782.

<sup>3</sup>*Del Commercio dei Popoli neutrali in tempo di Guerra*. Firenze.

He had previously published *Juris Publici Universalis, sive Juris Naturae et Gentium, Theoremata*. Liburni, vol. 3, 1776-8.

Mr. Wheaton considers him to be a much abler writer than Galiani. Wheaton's *Histoire*, p. 310.

1788: it was a war against Russia. Her first act was absolutely to renounce the principle of free ships free goods, which she had contended for so furiously as a *neutral*. "It would be too gross an affront" (Mr. Ward observes) "to her justice to suppose that she has two lines of conduct,—one as neutral, the other as belligerent: we will therefore rather suppose that she saw the errors into which the aspiring genius of Russia, or her own impulses, heightened, perhaps, by the incidental injuries inseparable from war, had betrayed her; and that she thought, as her treaties bade her think, that the principle before us could only be matter of convention."<sup>1</sup>

Such was the conduct of *Sweden*, practically affirming that this supposed right of the neutral was inconsistent with the clear right of the belligerent. As to *Denmark*, we have seen that in the year of the armed neutrality, 1780, she signed a treaty against the principle, *free ships make free goods*, on the 4th of July, and in favor of it on the 8th. By the convention of 1794, *Denmark* and *Sweden* renewed the *renunciation* of the maxim, *free ships make free goods*, which they had made in their treaties, about one hundred years before. These treaties had never been abrogated, and by this convention these States declared that they claimed no advantages other than those which were clearly founded upon their respective treaties with the different Powers at war. *Denmark*, moreover, especially confirmed her ancient treaty, referring, in her instructions, to her merchants,<sup>2</sup> to her treaty of 1670 with England, in which it was stipulated that there should be a certificate amongst the ship's papers to prove *that the cargo belonged to a neutral Power*, and ordered her magistrates in 1793 to deliver such necessary certificates.

But what did the author of the league<sup>3</sup> itself do? Why, on the 8th of February, 1793, Russia herself declared that her treaty with France of 1786, in which the *two* principles which have been so much discussed were contained, was no longer obligatory until the restoration of order in France.<sup>4</sup> She went much farther, however, and renewed in the same year her treaty with *England* of 1766, the stipulations of which were, that neutral commerce should be carried on "according to the principles and rules of the law of nations generally recognized."<sup>5</sup>

<sup>1</sup>Ward, pp. 164–5.

<sup>2</sup>Feb. 22, 1793.

<sup>3</sup>Manning, p. 272.

<sup>4</sup>Martens, vol. 5, p. 382.

<sup>5</sup>*Ibid.* 432.

Nor did she even stop here, but on the same day entered into another treaty with Great Britain, by which the two Powers engaged to prevent neutrals "from giving, on this occasion of common concern to every civilized State, any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or property of the French on the sea or in the ports of France."<sup>1</sup>

In the very same year, Great Britain concluded treaties containing articles to the same effect, with Spain,<sup>2</sup> with Russia,<sup>3</sup> and with Austria.<sup>4</sup>

France, the most important member of the Russian league, was not the last to throw overboard the doctrine for the propagation of which it was established.

On the 9th of May, 1793,<sup>5</sup> a decree of the National Convention declared that enemies' goods on board neutral vessels were good prize; that the vessels were to be released and freight paid by the captors. On the 21st of March, 1797, the Executive Directory issued a similar decree.<sup>6</sup>

CXCVI. So much for the fruits of the first armed neutrality. The soundness of the principle, and the faith of the engagements, were wafted, with the first breath of war, to those winds which bore the fleets and privateers of the *neutral* league, now become *belligerent*, to execute not the new but the ancient maritime international law.

*"Atque idem venti vela fidemque ferunt."*<sup>7</sup>

CXCVII. The conduct of the United States of North America with respect to this subject, deserves especial notice. This nation had been the cause of that war during the course of which appeared the first armed neutrality. It was at least her apparent interest to sanction the new law. Still more was she animated to do so by her resentment towards Great Britain and by gratitude to France; but her conduct with respect to this matter has been, under the most trying circumstances, marked not only by perfect consistency, but by preference for duty and right over interest and the expediency of the moment.

The treaty of the United States with France in 1780, was founded upon the stipulations of 1778, by which this Power, as far as her own

<sup>1</sup>Martens, vol. 5, p. 440.

<sup>2</sup>*Ibid.* 477.

<sup>3</sup>*Ibid.* 485.

<sup>4</sup>*Ibid.* 489.

<sup>5</sup>*Ibid.* 382.

<sup>6</sup>*Ibid.* 393.

<sup>7</sup>*Ovid, Ep.* vii.



predilections and private wishes were concerned, was at all times ready to abide.

In her treaty with England of 1795,<sup>1</sup> these predilections and wishes, which had found their legitimate issue in particular conventions, were abandoned, and their place was taken by the ancient general law. By the seventeenth article of this treaty, the United States agreed that enemies' property on board her vessels should be confiscated, the ship and the remainder of the cargo being allowed to depart without hindrance; but that, on just suspicion, the vessels themselves might be detained and carried into the nearest port for the purpose of examining and adjudicating upon them.

CXCVIII. It was of course perfectly competent to this Power to make these two different treaties with different States, and to her enduring honor, she adhered to both under circumstances of some difficulty.

In 1798, France promulgated<sup>2</sup> a new doctrine to the United States, viz., that as this Power was bound to treat France as the *most favored nation*, it was also bound not to allow French property on board American ships to be seized by British cruisers, while they prevented the seizure of British property in the same situation by the French. This demand was refused, and France threatened war in consequence. It is most truly said by Mr. Ward,<sup>3</sup> that the answers of the United States to France were models of dignified and convincing argument.

"Before the treaty with Great Britain" (it is represented in one of these notes), "the treaty with France existed. It follows, then, that the rights of England being neither diminished nor increased by compact, remained perfectly in their natural state, which is to seize enemies' property wherever found; and this is the received and allowed practice of all nations, where no treaty has intervened." A *new law of nations*, it is pretended, was introduced by the armed neutrality; but who were the parties, and what was their object? "The compact was in its own nature confined, with respect to object and duration. *It did not purport to change, nor could it change permanently and universally, the rights of nations not becoming parties to it.* The desire of establishing universally the principle, that neutral bottoms shall make neutral goods, is perhaps felt by no nation on earth more strongly than by the United

<sup>1</sup>Martens, vol. 5, p. 672.

<sup>2</sup>Ward, p. 167.

<sup>3</sup>*Ibid.*

States. Perhaps no nation is more deeply interested in its establishment; but the wish to establish a principle is essentially different from a determination that it is already established. The interests of the United States could not fail to produce the wish; their duty forbids them to indulge it, when decided on a mere right."<sup>1</sup>

"The complaints of the French," said another note of the American Minister to his President,<sup>2</sup> "had reference, amongst other things, to the abandonment by the Americans of their neutral rights, *in not maintaining the pretended principles of the modern law of nations*, that free ships make free goods; and that timber and naval stores are not contraband of war.

"The necessity, however, for the strong and express stipulations of the armed neutrality itself by all the various Powers which joined it, showed" (as the note went on to state) "that those maxims were not in themselves law, but merely the stipulations of compact; that, by the real law, belligerents had a right to seize the property of enemies on board the ships of friends; that treaties alone could oblige them to renounce it; and that America, therefore, could not be accused of partiality to Great Britain, *because she did not compel her to renounce it.*"<sup>3</sup>

CXCIX. In the year 1795, the United States made a treaty with Spain, including a stipulation the reverse of that contained in their treaty with England in the same year. In the Spanish treaty it is stipulated, that cargoes in neutral ships shall be free, no distinction being made as to who are the proprietors of the merchandises.<sup>4</sup>

In 1799, the United States entered into a treaty with Prussia, by the 12th article of which they declared, that as experience showed that the maxim, free ships make free goods, had not been respected in any of the wars since 1785, Prussia and the United States should, in a future time of peace, either separately between themselves, or jointly with other Powers, concert measures for the future condition of neutral commerce in time of war; meanwhile these two Powers agree that their ships shall conduct themselves as favorably towards the merchant vessels of the neutrals as the course of the war then existing might permit, observing the general rules of international law.<sup>5</sup>

<sup>1</sup>Ward, p. 168, citing *Collection of Acts*, 198, etc.

<sup>2</sup>*Mr. Pinckney to General Washington.*

<sup>3</sup>*State Papers*, vol. 5, pp. 281, 286.

<sup>4</sup>Article 15. Martens, vol 6, p. 154.

<sup>5</sup>*Ibid.* 676.

But in the next year, 1800, the old French doctrine of free ships free goods, enemy's ships enemy's goods, was incorporated into a treaty between France and the United States.<sup>1</sup>

During the war which commenced between the United States and Great Britain in 1812, the Prize Court of the former uniformly enforced the generally acknowledged rule of international law, that enemies' goods in neutral vessels are liable to capture and confiscation, except as to such Powers with whom the American Government had stipulated, by subsisting treaties, the contrary rule, that free ships should make free goods.<sup>2</sup>

CC. In the treaty of commerce of 1797, between Russia and England, the article which relates to neutral commerce<sup>3</sup> is silent on the question, and therefore the old law remained unchanged.

In the next year (1798), Russia entered into a treaty with Portugal, in which it was stipulated, that *free ships shall make free goods*, but also that *neutral goods in an enemy's ship should be confiscated*.<sup>4</sup>

CCI. The first armed neutrality<sup>5</sup> took its rise, as we have seen, in the ignoble rivalry of contending courtiers and the vanity of a dissolute Empress of Russia. The second armed neutrality had not a more distinguished origin; it was the offspring of a mad Emperor of the same kingdom.

The question of *convoy* is connected with the *right of search*, and the discussion of it belongs to a subsequent chapter; but it should be mentioned here, as having excited some irritation in the Danish and Swedish Courts against England; this, however, had been allayed by the mission of Lord Whitworth, the English Ambassador to Copenhagen.

At this juncture the Russian Emperor Paul claimed, without a shadow of reason,<sup>6</sup> the island of Malta, which had been recently ceded to the English. He had become Grand Master of the once celebrated order of the knights in that island, and his attachment to this imaginary distinction was supposed to be one of the subjects on which his continually increasing insanity manifested itself. The refusal of England to surrender this island exasperated Paul, and, with an open contempt

<sup>1</sup>Articles 14, 15. *Ibid.*, vol. 7, p. 103.

<sup>2</sup>Wheaton's *Elements* (Ed. Lawrence. 1855), p. 530.

<sup>3</sup>Article 10. *Post*, p. 445.

<sup>4</sup>Article 24. Martens, vol. 6, p. 550.

<sup>5</sup>Manning, p. 274.

<sup>6</sup>He alleged the treaty of 1798, which was a treaty of subsidy, in which no clause affords a pretext for the demand.—Martens, vol. 6, p. 557.

of the stipulations of an existing treaty,<sup>1</sup> he laid an embargo on all British property within his dominions, and with a semi-Asiatic notion of justice, ordered one British vessel to be burned because another had escaped from harm.<sup>2</sup>

The next step of Russia was characteristic; it was to renew the abandoned armed neutrality, as if for the purpose of demonstrating how little the league had ever been concerned with general international justice, and how obviously it had always been intended to injure one particular State. Sweden,<sup>3</sup> Denmark,<sup>4</sup> and Prussia<sup>5</sup> joined the revived confederacy, which contained the old stipulations, with this important addition:—

“That the declaration of the officers who shall command the ship of war, or ships of war, of the King or Emperor, which shall be conveying one or more merchant ships, that the convoy has no contraband goods on board, shall be sufficient; and that no search of his ship, or the other ships of the convoy, shall be permitted. And the better to insure respect to those principles, and the stipulations founded upon them, which their disinterested wishes to preserve the imprescriptible rights of neutral nations have suggested, the high contracting Parties, to prove their sincerity and justice, will give the strictest orders to their captains, as well of their ships of war as of their merchant ships, to load no part of their ships, or secretly to have on board any articles, which, by virtue of the present Convention, may be considered as contraband; and, for the more completely carrying into execution this command, they will respectively take care to give directions to their courts of admiralty to publish it, whenever they shall think it necessary; and, to this end, the regulation which shall contain this prohibition, under the several penalties, shall be printed at the end of the present Act, that no one may plead ignorance.”

This attempt to introduce a new positive law upon *contraband*, happily, like the rest of the treaty, abortive, does not require further discussion in this place.

By other articles of the treaty, mutual assistance is promised in case of attack.<sup>6</sup>

CCII. The second Russian league was destined to enjoy even a

<sup>1</sup>The 12th Article provided that, in the event of the breaking out of war, the goods and persons of neither country should be detained or confiscated.

<sup>2</sup>*Post*, p. 516.

<sup>3</sup>*Post*, p. 531.

<sup>4</sup>*Post*, p. 537.

<sup>5</sup>*Post*, p. 544.

<sup>6</sup>*Post*, p. 531.

shorter existence than the first. Great Britain began her war upon this new confederacy against her by an attack upon Denmark. Nelson's immortal victory at Copenhagen was followed by another event of great importance at the time, and which demonstrated in what *personal feeling* the new league had originated. There is no despotism, however unlimited, none, however absolute and unquestionable, according to the positive law or usage of the country over which it is exercised, as not to find, sooner or later, some check in the necessities and feelings of mankind. The tyranny of Domitian and Robespierre<sup>1</sup> became at last unendurable to the poor as well as the rich, and then ensued, by violent means, their death. The ferocious acts of the Emperor Paul, and the well-founded belief that they sprang, in a great measure at least, from a disordered brain, brought about at this critical period a similar result; not, however, from the combination of the humble and great, but from the aristocracy alone. Paul suddenly disappeared from the stage on which he was acting so terrible a part. He was assassinated, and, as it is generally, and certainly not without good warrant, believed, in accordance with the deliberate resolution of the notables of his Court. The act has indeed been defended as a necessary measure of self-defense, no other remedy being supplied for such an emergency by the constitution of Russia. We are only concerned in this work with the result, which was very remarkable. Alexander, the successor to Paul, immediately concluded a treaty with England, which adjusted the dispute. By this treaty, in June, 1801, certain concessions were made by England respecting *convoy*, and it was stipulated that goods embarked in neutral ships should be free, *except* contraband *and the property of enemies*. Thus was the old rule reestablished between Russia and England, and to this treaty both Sweden and Denmark acceded.<sup>2</sup>

CCIII. Among the most remarkable works upon international jurisprudence which the crisis of the second armed neutrality produced, were the *Letters of Sulpicius*, by Lord Grenville, and a *Speech*, afterwards published by the same distinguished statesman, upon the treaty between England and Russia in 1801.

<sup>1</sup>"Sed periit postquam cerdonibus esse timendus Coeperat: hoc nocuit Lamiarum caede madenti." *Jur. Sat.* iv, 153.

<sup>2</sup>For the *three* treaties, see *post*, pp. 595, 606, and note. Russia had only a *few days* before made a treaty with Sweden, embodying the articles of the armed neutrality, March, 1801 (Martens, vol. 7, p. 329), so that, in one and the same week, Russia embodied the two opposite principles in her treaties with the same nation; and it has been gravely argued that the treaties constitute the international law on this subject! Manning, 278.

In the *Letters*, Lord Grenville—who had but recently resigned the office of foreign secretary, which he had filled for many years—maintained, with perfect knowledge of the subject, much erudition, great vigor of logic, and manly eloquence, the ancient doctrines of international law against those of the armed neutrality.

In the *Speech*,<sup>1</sup> he declared that dangerous concessions, with respect to the coasting and colonial trade, to contraband of war and blockade, had been made by Great Britain. These subjects remain to be considered. With respect, however, to enemy's goods on board neutral ships, Lord Grenville admitted that it was fully recognized by the second section of the third article of the convention, which implied an abandonment of the opposite principle of *free ships free goods*, on the part of the northern Powers.<sup>2</sup>

**PRADIER-FODÉRE:** *Traité de Droit International Public Européen et Américain*. Paris, 1885–1906

P. Pradier-Fodéré. French publicist; born in 1826; died in 1904; member of the Institute of International Law. His chief work in the domain of international law is his elaborate *Traité de Droit International Public Européen et Américain*, 1885–1906, 8 volumes.

Mr. Pradier-Fodéré spent a number of years in South America and became very familiar with Latin-American conditions. His work, as the title shows, considers international law both from the European and American standpoint, and is highly regarded on the Continent and in Latin America.

He also published an annotated edition of Vattel, 1863, a French translation of Grotius' *De jure belli ac pacis*, 1867, and *Cours de Droit Diplomatique*, 1880.

*Volume 8, page 176.*—Privateering cast a sinister light upon the maritime rules which preceded the peace of Ryswick (1697) and the treaty of Utrecht (1713); the vexations to which the English cor-

<sup>1</sup>The argument was sound; but as subsequent treaties upon the same subject have been contracted between England and Russia, the concessions have no present operation or effect.

<sup>2</sup>See Phillimore's *Commentaries upon International Law*, vol. 1, sec. xlix, where this remarkable speech is referred to upon the important question of *permanent* alterations of general international law being introduced into a treaty.

Mr. Wheaton (*History*, pp. 408–20) gives very copious extracts from this speech, and remarks with truth upon "the very lame and inconclusive replies made by the other speakers" in the debate in the House of Lords.—*Parliamentary History of England*, vol. 36, pp. 200–255

sairs subjected the navigation of neutral States, especially during the last half of the eighteenth century, along with the violent conduct of the North American ship-owners during the independence war of the American colonies, led the most of the European States, upon the appeal of Russia (1780), to unite for the protection of maritime commerce, in time of war, "in order that through the common efforts of all the neutral maritime Powers, there might be established, in behalf of the mercantile navigation of the neutral nations, a natural system founded upon justice which might serve as a rule to the centuries to come."<sup>1</sup> But this system never took form in a universal maritime code, and what is more, during the various wars which followed, the principles upon which it was based have not been observed by the very Powers which had been the first to propose it. A second league, likewise brought about by Russia in 1800, yielded no greater results, received the approval of fewer States than that of 1780 and came to an end after a short time.<sup>1</sup>

<sup>1</sup>The arbitrary proceedings, injurious to the neutrals, led Russia in 1780, to establish in behalf of the navigation and of the commerce of the neutrals, a system of principles which has since been termed the system of *armed neutrality*. The belligerent Powers (at that time they were France, Spain and Great Britain) which should have refused to recognize this system, were to have been constrained by a naval force of the neutral nations. The system of armed neutrality was formally notified by Russia to the Courts of Versailles, of Madrid and of London, and the neutral Powers having been invited to join this system it was immediately adopted by Denmark, Sweden, Holland, Prussia, Austria, Portugal and the Two Sicilies which entered into special conventions with Russia in regard to this matter. The most of these Powers were not satisfied to make their accession to this system known to the belligerent Powers, but they notified the fact to each other, and several of them made answer to that notification by forwarding an act of acceptance, so that a conventional league was established between these States, a real defensive alliance, with the object of insuring the rights of the neutrals. Furthermore, the Powers of the North decided in principle that within the Baltic Sea, as a closed sea, hostilities should not be permitted. France and Spain looked with favor upon the system of armed neutrality, but England declared that she would continue to abide by the clearest and most generally accepted principles of the law of nations, and by the stipulations of her treaties of commerce. But in view of the energetic attitude of the neutral Powers which had manifested a firm will to defend their pretensions in common, she enjoined upon her ship-owners to act less rigorously toward them. But there is no league, however closely formed, which does not end by disintegrating, and the league of armed neutrality did not escape this fate during the war of the French Revolution. Russia herself which had been its original instrumentality, abandoned it. *Mémoire ou Précis historique sur la neutralité armée et son origine, suivi de pièces justificatives*, by Count de Goertz (Basle, 1801); Albedyhl (baron d'), *Nouveau mémoire ou précis historique sur l'association des Puissances neutres connue sous le nom de la neutralité armée, avec des pièces justificatives*, 1798; Castéra, *Histoire de Catherine II*. In regard to this league, its antecedents, the laborious negotia-

Page 906, Section 3230.--It has been justly remarked that *armed neutrality* to which reference is made so frequently, that is to say, the neutrality *protected by an armed force* organized by a neutral Power, solely with that object in view, is not a special kind of neutrality, but merely a more or less efficacious manner of protecting ordinary neutrality if the latter stands in danger of being violated by powerful belligerents. Furthermore, any neutrality must be able to defend its rights, and, in this sense, we may affirm that *neutrality must be armed*. When threatened, then without overstepping their neutrality, the neutral States may evidently increase their forces and hold them ready, so that in case of necessity they may by force of arms oppose any attempt against their position as neutrals, provided that the measures taken by them do not exceed the defensive needs of the legitimate protection of their rights. This contingency, when such measures are to be taken, presents itself especially in the case where neutral States should be exposed to find their neutrality violated by a belligerent whose territory is nearby, vicinal or contiguous. The defense of its neutrality is a national and international duty of every neutral State; it prevents wars from extending over large areas; it limits the arena of battle.<sup>1</sup> When neutral States observe neutrality without taking military measures to defend it in case of need, neu-

tions which preceded its conclusion and the facts which led thereto, it is best to read up on these matters in the very substantial and complete work of Mr. Paul Fauchille, entitled: *French Diplomacy and the League of Neutrals of 1780* (Paris, 1893).

The wars of those troublous times brought again home to the Powers of the North the necessity to insure the rights of the neutral flag by means of defensive alliances. Hence, the *second armed neutrality* in 1800. To this effect, Russia concluded treaties with Sweden, Denmark and Prussia. The principles of the *first armed neutrality* were resanctioned by it, increased and interpreted as appeared then necessary. Yet, this new armed neutrality was not adopted by as many Powers as the first; its life was only of short duration. Six months after its conclusion, Great Britain succeeded in forming an alliance with Russia through a maritime convention to which Denmark and Sweden were compelled to accede. In 1807 Russia informed England that she regarded the maritime convention as annulled and reaffirmed the basis of the armed neutrality by pledging herself never to depart from that system. Later on, at the time of the conclusion of the Oerebro Treaty between Sweden, England and Russia (1812), neither the maritime convention nor the system of armed neutrality were reestablished. See Klüber, *Droit des gens moderne de l'Europe*, Sections 307, 308, 309 (edition of 1874), pp. 440, 441.

<sup>1</sup>Evidently it is not necessary that the neutrals be challenged, in order to justify their military measures calculated to defend their neutrality against the enterprises of the belligerents; imminence of such a danger sufficiently justifies them to resort to these measures.



trality is said to be peaceful in contradistinction to *armed neutrality*; but it is an inappropriate expression, because any neutrality, even *armed neutrality*, is a *peaceful neutrality*, in view of the fact that neutrals arming solely to protect their neutrality do so only to remain at peace. The expressions *peaceful* and *armed* do not, moreover, express necessarily opposite ideas: the former refers to a moral disposition, and the second expresses a fact. It must be recognized that this inexact designation is merely another manifestation of the tendency of writers to indulge in subtle and clever language. The term *armed neutrality* has also been given to certain alliances which, because of the inefficiency of their isolated forces, various neutral States have contracted in view of a common defense, when their interests were identic, in order to compel belligerents to recognize their rights and, betimes, their pretensions. The *armed neutralities* of 1780 and of 1800 between the Powers of the North, are a very memorable example of such alliances, although, according to the observation of Kleen, they were not confined to the defense of rights already recognized; they instituted new legislation; and they were something more than an *armed neutrality* in the ordinary sense of the word.<sup>1</sup>

**PRITTWITZ u. GAFFRON:** *Die bewaffnete Neutralität, ihre theoretische und praktische Bedeutung.* Borna, Leipzig, 1907.

Friedrich Wilhelm von Prittwitz und Gaffron, born 1885, Referendar at Frankfort-on-the-Main, submitted the above work as an inaugural thesis for the attainment of the doctorate from the law faculty of the University of Leipzig.

*Page 17.*—The basis for the admissibility of an armed neutrality has its root in national sovereignty, in virtue of which the State may forbid any and all foreign attack within the realm of its authority internationally circumscribed on the ground of the fundamental law of self-preservation.<sup>2</sup> Even as the human being may for the preservation

<sup>1</sup>Kleen, *Lois et usages de la neutralité*, 1898, vol. 1, bk. 1, ch. 2, sec. 22, p. 119, note 1.

<sup>2</sup>Gareis, *Institutionen des Völkerrechts*, p. 93; v. Liszt, *Das Völkerrecht*, p. 62.

of his integrity resort to self-defense in case of unlawful attack, so is the neutral State permitted to resort to self-defense for the preservation of its status defined and acknowledged internationally. It is therefore thoroughly consequential when the theory of the law of nations entitles the neutral to protest against the belligerent parties' destruction of him in his peaceful relations, and confers upon him the further right, to defend this claim and to prevent its violation through armed forces. On the other hand, and in spite of the justification of his motive, any aggressive measure of the neutral would mean an unlawful "trespass of self-defense." In the two kinds of neutrality—temporary and continuous—neutrality may therefore assume the form of "armed neutrality."<sup>1</sup> In a continuous neutrality, armament becomes an absolute duty of the neutralized State, because the latter must by all means at its command prevent foreign military bodies from crossing its territory. "It must resort to all its means of strength for the purpose of defense."<sup>2</sup> Hence we understand how in fact, Belgium<sup>3</sup> and Switzerland<sup>4</sup> maintain strong frontier fortifications and give great attention to the readiness of their armies.<sup>5</sup>

It is in accord with the entire logical development of the idea of neutrality that the freedom to enter into alliances with one another is universally recognized, especially for the purpose of self-defense, that is to say, when each of the allied States has placed itself in a status of armed neutrality. The question is now as to whether or not this holds true also for neutralized States? In view of the fact that the law of nations which entitles them to wage a defensive war<sup>6</sup> gives them the further right to enter into defensive alliances,<sup>7</sup> the question may therefore be answered affirmatively. Moreover, this question would become one of actuality, only if the guaranteeing Powers violated their duties.

*Page 20.*—In the history of international law, where is it that we meet for the first time with the concept of armed neutrality in its practical application?

<sup>1</sup>Bluntschli, *Das moderne Völkerrecht der Zivilisirten Staaten*, p. 418, § 752.

<sup>2</sup>Bonfils, *Lehrbuch des Völkerrechts*, pp. 185–86.

<sup>3</sup>For instance, Namur, Liège.

<sup>4</sup>For instance, at St. Gothard.

<sup>5</sup>Schweizer, *Geschichte der schweizerischen Neutralität*, pp. 1030 et seq.

<sup>6</sup>Heffter-Geffcken, *Das Europäische Völkerrecht der Gegenwart*, p. 318.

<sup>7</sup>Bonfils, *loc. cit.*, p. 185; Rivier, *Lehrbuch des Völkerrechts*, p. 329.

As a rule we refer to the year 1780, to the time of the North American War of Independence. From its very beginning, this rule had constantly met with increasing interest on the continent of Europe, and after France had publicly taken sides with the "rebels," Great Britain found itself more and more threatened by the danger of isolation.<sup>1</sup> It decided therefore to secure aid from Russia and instructed its Ambassador, Sir James Harris, to that effect; and the latter soon succeeded in gaining the confidence of Empress Catherine II. Count Panin, the Russian Chancellor, met these efforts by declaring that the interests of national welfare demanded strict neutrality on the part of Russia.

In the course of these negotiations the war operations were extended and the complaints of the neutral countries increased in number on account of the injury caused to their commercial interests. The danger of the privateers became ever greater. Such an attack of an American corsair in the year 1778 had given rise to a convention between the Powers of the North called the Russian-Swedish-Danish Concert (1779),<sup>2</sup> which purposed the neutralization of a part of the North Sea. But Spain's participation in the war against England and her disregard of the neutral flag made the status of the neutrals worse again; this proved an incentive to the efforts of Sir Harris who had found a confederate in Prince Potemkin, the favorite of the Empress. Two cases following one another in swift succession—the seizure of two Russian ships by the Spaniards<sup>3</sup>—which roused the Empress to great anger, seemed to bring Harris near to the realization of his aim, that is to say, to make her an ally of England. In February, 1780, Catherine issued a ukase to the admiralty for the mobilization of a flotilla of fifteen ships, a spontaneous act of which Panin had had no foreknowledge. The necessary consequence of this measure was a political announcement by Russia that this had to take place, and that she would set forth therein Russia's idea of the rights of neutrality

<sup>1</sup>Bergbohm, *Die bewaffnete Neutralität, 1780–1783*, pp. 51 *et seq.*; Bonfils, *loc. cit.*, pp. 763 *et seq.*; Busch, *Samtliche Schriften*, vol. 4, pp. 352 *et seq.*; v. Dohm, *Denkwürdigkeiten meiner Zeit*, vol. 2, pp. 100 *et seq.*; Poels, *Darstellung des gemeinen deutschen und des hamburgischen Handelsrechts für Juristen und Kaufleute*, vol. 3, pp. 1208 *et seq.*

<sup>2</sup>This Concert is the precursor of the armed neutrality of 1780; in the course of the negotiations, Count Bernstorff, the Danish Chancellor, had set forth principles which are the foundation of those contained in Empress Catherine's declaration of 1780.

<sup>3</sup>Wiegner, *Die Kriegskonterbande in der Völkerrechtswissenschaft und in der Staatenpraxis*, p. 86.

and threatened the armed support of her views; all this was clear to Catherine II;<sup>1</sup> and although Count Panin, who had been entrusted with the elaboration of her plan, had so formulated it<sup>2</sup> as to take a leaf out of Sir Harris' plans and had brought the Empress herself into other tracks than she may have at first realized, yet the initiative of this plan can not be denied to the Empress.<sup>3</sup>

Two weeks after the issuance of the ukase to the admiralty, February 27, 1780, the world-famous declaration of Catherine was approved and on the following day forwarded to the Courts of London, Versailles and Madrid, accompanied by a rescript, which referred to the mobilization on the part of the Russian fleet for the purpose of protecting commercial navigation, and followed by a ukase to the Board of Trade with appropriate measures and directions which the Board was expected to follow. This declaration was the foundation for the treaties concluded between Russia and Denmark of July 9th and between Russia and Sweden of August 1st, which treaties, mutually recognized, led to an alliance of the three northern realms.<sup>4</sup> This alliance was acceded to in the following years by Prussia, Austria, the United States, Holland, Portugal, and Naples.<sup>5</sup>

Taking its appellation from the text of the declaration referred to, history has given to this neutrality alliance the name of "The Armed Neutrality of 1780," and the special significance of this alliance as a political system seems to justify its name of the "first" armed neutrality.

*Page 24.*—Two decades after the "first" armed neutrality we again find the northern States united under the leadership of Russia in a neutrality alliance, which belongs to the group of armed neutralities, that is to say, to the so-called second armed neutrality.<sup>6</sup> In the year 1794, when the English through the occupation of the island of Corsica had won a point of support in the Mediterranean, the interference with neutral navigation started anew. To protect themselves against

<sup>1</sup>With regard to the origin of the first armed neutrality, see Bergbohm, *loc. cit.*, pp. 239 *et seq.*, 241, note 1; Gessner, *Droit des neutres*, pp. 39 *et seq.*; van de Poll, *De principijs foederis quod dicitur neutralitas armata*, pp. 10 *et seq.*; Poels, *loc. cit.*, pp. 1207 *et seq.*

<sup>2</sup>By the use of Bernstorff's ideas.

<sup>3</sup>Fauchille, *La diplomatie française et la ligue des neutres de 1780*, p. 355, who credits the French Ambassador Vergennes with a considerable cooperation.

<sup>4</sup>Bergbohm, *loc. cit.*, pp. 162-63.

<sup>5</sup>Bonfils, *loc. cit.*, p. 45.

<sup>6</sup>See Bergbohm, *loc. cit.*, pp. 256 *et seq.*; Bonfils, *loc. cit.*, p. 453; Gessner, *loc. cit.*, pp. 44 *et seq.*; Poels, *loc. cit.*, pp. 1212 *et seq.*

the inconsiderate exercise of the right of search on the part of the belligerents,—France and England,—Sweden and Norway at first had their ships sail under convoy.<sup>1</sup> But England could not be deterred from resorting nevertheless to forcible searches, and in the year 1800 the English attacked and captured a Danish frigate which, according to her instructions, would by force prevent the search of her convoy. This was the immediate reason which led Emperor Paul I of Russia, who was kept informed by the Danes of the unavailing negotiations which took place with England with regard to this incident, to conclude, December 4, 1800, the convention of the so-called second armed neutrality. During the same month, Prussia also joined this convention. Through diplomatic notes, Great Britain soon thereafter made representations at the Prussian and Danish Courts because of the unfriendly tendencies of the agreement. When these representations did not yield the expected results, the English Government on January 14, 1801, gave orders to seize all Danish, Swedish and Russian ships (Russia had acted in like manner toward English ships) and sent a fleet to the Baltic Sea. In answer to this act, the Danish Government placed an embargo upon English ships. Unfortunately, the Danish fleet could not prevent the onward course of the English squadron. Denmark's defeat brought about the suspension of the principles of the neutrality alliance through the armistice concluded on April 9th of that year. The fate of the second armed neutrality was completely sealed through the convention which Great Britain concluded on June 17, 1801, with the successor of Paul I, Emperor Alexander I, which almost entirely disregarded the postulates of the allies of 1800.<sup>2</sup>

These historic sketches are deemed sufficient as a characterization of the development of armed neutrality in the applied law of nations.

**RIVIER:** *Principes du Droit des Gens.* Paris, 1896.

Alphonse Rivier. Swiss publicist; born in 1835; died in 1898; consul-general of Switzerland in Brussels; professor of international law in the University of Brussels; member of the Institute of International Law. Professor Rivier is known in international law for two treatises:

<sup>1</sup>That is to say, under the protection of a war-ship which thus assumed the responsibility for the cargo.

<sup>2</sup>Bergbohm, *loc. cit.*, pp. 259 *et seq.*; Poels, *loc. cit.*, pp. 1216 *et seq.*

1. *Lehrbuch des völkerrechts*. First edition, 1889; second edition, 1899.

2. *Principes du droit des gens*, 2 volumes, 1896.

Rivier is universally regarded as a masterly expounder of modern international law.

*Volume 2, page 372.*—The wars of the last century were fatal to neutrals.

England, especially, carried to the extreme the real or alleged rights of belligerents, chiefly at sea. All commerce with the enemy was forbidden to neutrals, the conception of contraband of war was extended beyond all measure; paper blockade or English blockade was in favor; the rule of war of 1756 is still famous; the admiralty invented the doctrine of continuous voyage.

The extreme practices of England brought about a reaction, which manifested itself in the armed neutrality of 1780.<sup>1</sup> This movement owed its origin to the great Empress Catherine, who was ably seconded by the Danish Minister, André von Bernstorff (1735–1797), and also, as has recently been shown, to the diplomatic action of France. “The league of neutrals,” says Mr. Fauchille, “appears to us to have been the joint work of France and of Russia. It was Louis XVI’s Minister, M. de Vergennes, who first conceived the idea, but it was Catherine II who realized this great conception, and this realization was a deliberate act on her part.”

Catherine’s declaration to the Courts of London, Versailles, and Madrid, is dated March 9/February 27, 1780. It received the sanction of Denmark and of Sweden by their treaties of July 9 and of August 1 of the same year; between 1781 and 1783 the Netherlands, Prussia, Austria, the Two Sicilies, Portugal, France, and the United States acceded to it. The following are the most important passages thereof: “[The Empress] thought it but just to publish to all Europe the principles she means to follow, which are the most proper to prevent any misunderstanding, or any occurrences that may occasion

<sup>1</sup>On the armed neutrality: Bergbohm, *Die bewaffnete Neutralität, 1780–1783. Eine Entwicklungsphase des Völkerrechts im Seekriege*, 1884. Martens, *Revue de droit international*, vol. 13, pp. 94–97; vol. 16, pp. 312–314. *Recueil des traités de la Russie*, vol. 9 (10), pp. 295 *et seq.* Mr. Martens attempts to prove, contrary to the opinion expressed by Wheaton, which was founded especially on the dissertation of Goertz and the authority of Dohm, that the league of neutrals was indeed the personal accomplishment of the great Empress. Fauchille, *La diplomatie française et la ligue des neutres de 1780 (1776–1783)*. Work crowned by the Institute of France. 1893.

it. Her Imperial Majesty does it with the more confidence, as she finds these principles coincident with the primitive right of nations which every people may reclaim, and which the belligerent Powers can not invalidate without violating the laws of neutrality, and without disavowing the maxims they have adopted in the different treaties and public engagements. They are reducible to the following points: (1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war; (2) that the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise; (3) that, as to the specification of the above-mentioned merchandise, the Empress holds to what is enumerated in the 10th and 11th articles of her treaty of commerce with Great Britain, extending her obligations to all the Powers at war; (4) that to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous; (5) that these principles shall serve as a rule for proceedings and judgments as to the legality of prizes.

"Her Imperial Majesty, in making these points public, does not hesitate to declare, that to maintain them, and to protect the honor of her flag, the security of the trade and navigation of her subjects, she has prepared the greatest part of her maritime forces. This measure will not, however, influence the strict neutrality she does observe, and will observe, so long as she is not provoked and forced to exceed the limits of moderation and perfect impartiality. It will be only in this extremity that her fleet have orders to go wherever honor, interest, and need may require."

The Russo-Prussian treaty of May 8, 1781, defines the fifth point still further: "that neutral vessels may be detained only for just cause and when the facts are perfectly evident; that they shall be adjudged without delay; that the procedure shall always be uniform, prompt, and legal; and that, in addition to the compensation granted to vessels which have suffered loss without having been at fault, complete satisfaction shall in each case be rendered for the insult to the flag."

"It is perfectly true," says Mr. Geffcken, "that the allied States themselves, and Russia in particular, afterwards abandoned and sacrificed the principles which they had proclaimed as the palladium of neutrals and the foundation of international maritime law. The armed

neutrality of 1780 retains none the less its great historical and legal scope. . . . It has shown that even the strongest maritime Power may be constrained to conform its conduct to the demands of neutrals, when the latter are united." Although England did not renounce any of its principles, it found itself forced to deal gently with neutrals, and in the later years of the war it comported itself, on the whole, in conformity with the principles proclaimed in the declaration of 1780.

In the matter of the rights of neutrals, as in divers other matters, the wars of the revolution and of the Empire marked a step backward. Neither the allies nor France permitted neutrality in fact. France, by its laws and decrees of 1793, renounced the principles of armed neutrality, and even the principles that had been sanctioned by earlier treaties. In its ordinances of the same year, England maintained its old maxims, and with the support of Prussia forced the other States to accept them. In Denmark, however, Bernstorff resisted, but Russia was easily converted to the theories which it had combatted thirteen years before. Article 3, and especially Article 4 of the Anglo-Russian treaty of March 25, 1793, are significant. The King and the Empress "engage to unite all their efforts to prevent other Powers, not implicated in this war, from giving, on this occasion of common concern to every civilized State, any protection whatever, directly, or indirectly in consequence of their neutrality, to the commerce or property of the French, on the sea, or in the ports of France." Thenceforth forcible measures against neutrals increased on all sides. It would be a waste of time to state them in detail.

A new phase developed in 1800. The installation of the Prize Council (1801) inaugurated it in France. For the four Powers of the North and France, the second armed neutrality of December 6/18, 1800, renewed in general, though in weakened form, the declarations of the first, and it added provisions with regard to convoy. Russia once again became the protector of neutrals. England did not keep them waiting long for a reply. A cabinet order, dated January 14, 1801, put an embargo on Russian, Swedish, and Danish vessels, and the maritime convention of June 17, 1801, put an end to the second league of neutrals. Six years later, however, Alexander annulled the convention of June 17 and again proclaimed the principles of 1780.<sup>1</sup>

<sup>1</sup>On the history of the maritime convention and the declaration of 1807, see Martens, *Recueil des traités russes*, vol. 11, pp. 1-28; 106-142.



**TRESCOT:** *The Diplomacy of the Revolution.* New York, 1852.

William Henry Trescot. American publicist and diplomat; born in 1822; died in 1898; studied law at Harvard and was admitted to the bar in 1843; assistant secretary of state in 1860; member of State Legislature of South Carolina; counsel for United States before Halifax Fishery Commission in 1877; minister to Chile in 1881-1882, and delegate to Pan American Congress in Washington. His writings include *The Diplomacy of the Revolution*, 1852, *An American View of the Eastern Question*, 1854; and *The Diplomatic History of the Administrations of Washington and Adams*, 1857.

Page 72.—The second event to which reference has been made as exciting the hopes of American statesmen, and exercising a large though indirect influence upon the relative position of the belligerents, was the formation of the armed neutrality of 1780.<sup>1</sup> Its history is important under two aspects—first, as affecting the practical combination of European nations, and second, as declaring a new system of maritime law. The treaty of 1763 had, to a great extent, separated England from a continental connexion, and in the war with her colonies she was absolutely without an ally. The treaty between France and the United States, the declaration of war by Spain, the very uncertain temper of Holland, compelled England to renew, if possible, an alliance with some of the European Powers. Sir James Harris, afterwards better known as Lord Malmesbury, was despatched to St. Petersburg to effect, if possible, a political combination. Sanguine, adroit, and bold, he hoped too soon, moved too fast, and ventured too much; and without paradox it may be said that his very ability disabled him. He found the power of the court divided between Potemkin, a rising, and Panin, a setting favorite. He secured the one, but provoked the other; and although he estimated their positions rightly, he found, to use the apt comparison of Goertz, that if Count Panin was “a star that hastened visibly to its decline, it was still above the horizon, and those even who most desired to see it disappear, still believed that they stood in need of its light.” Having obtained, through the influence of Potemkin, two private interviews

<sup>1</sup>Flassans, *Diplomatie française*, vol. 7. Garden's *Traité de paix*, vol. 5, ch. 21. *Diaries and Correspondence of the Earl of Malmesbury. Notices historiques sur le système de la neutralité armée, et son origine*, par M. le Comte de Goertz. *Diplomatic Correspondence of the Revolution. Hautefeuille, Droits et devoirs des nations neutres; Discours préliminaire.* Wheaton's *History of International Law*.

with the Empress Catharine, he succeeded, after some important concessions, in persuading her to consent to an English alliance. But when he received, in reply to his home-communications, full powers to negotiate such a treaty, he discovered to his mortification that Panin, to whom the English alliance was both politically and personally distasteful, and from whom the preliminary interviews with Catharine had been carefully concealed, had succeeded in undoing his work, and as Foreign Minister was prepared with a formal refusal to negotiate.

As if to remedy his disappointment, however, news soon arrived at St. Petersburg of the seizure of two Russian vessels laden with corn and taken by the Spaniards in the Mediterranean. The indignation of Catharine, peculiarly sensitive as to her commerce, blazed out; and, supported by Potemkin, Lord Malmesbury, with great ability, used the fortunate accident to persuade her to demand from Spain peremptory satisfaction, and at the same time to fit out a fleet at Cronstadt to be sent to sea at the first opportunity. These preparations were again carefully concealed from Count Panin, and Lord Malmesbury naturally and joyfully anticipated their inevitable result—an embroilment with Spain and her belligerent allies. Panin soon discovered the extent and direction of this well-contrived manoeuvre, and defeated it by a policy at once bold and subtle. He expressed deep sympathy with the natural indignation of the Empress at this violation of her neutral rights, but suggested that instead of being an exceptional case needing correction, it proceeded from a false system of public law, against which now was the time to protest. If England agreed with Russia in condemning the seizure, the condemnation by Russia of the principle would be equally acceptable. He therefore persuaded the Empress to publish a declaration to all the belligerents that such a violation of neutral rights would not be tolerated, and to call upon all the northern and neutral Powers to make common cause in defense of the just principles of maritime law. He satisfied her that this was not only conformable to the desire of the English Ambassador, but placed her at the head of a great league for a high and worthy purpose. He further induced her to keep her communications to the foreign Courts secret until they should have reached their destination. The despatches were written and the couriers started, without any discovery by Lord Malmesbury of the nature of their missives. The Empress indeed informed him that in a day or two such communications would be made to his Court as would amply satisfy their desires, and this gracious news he him-

self hastened to communicate. Great then was the surprise and indignation of the English Cabinet when they received from Russia a formal declaration of maritime law contradicting the whole practice of the English Government, and striking at the foundation of the system which England had always haughtily maintained, and could at this very juncture least of all afford to dispense with. Russia demanded that free ships should make free goods—that even the coasting trade of belligerents should be opened to neutrals—that contraband should be limited and blockades stringent. England received the declaration coldly. The northern Powers eagerly combined with Russia to form a league in the defense of this system, and the belligerents whom Lord Malmesbury hoped to discomfort seized their advantage. Spain made restitution, and in recognizing the justice of the new code pleaded the arbitrary violence of England as her excuse for having violated it; while France approved the magnanimous wisdom of the Empress, and readily consented to what, by the ordinances of 1778, she had already enacted in principle as the law of her own marine. Unwilling to abandon principles which she had openly avowed and always acted upon, England saw her last hope of a continental alliance destroyed by this European league. Irritated by Holland's evasion as to her treaty obligations, and the adhesion of that Republic to the armed neutrality soon after, England declared war against the Dutch. The practical result of the armed neutrality therefore was to add one more to the open enemies of England, and to render still more impracticable any compensating alliance. In this view it was certainly to the United States an event of great importance.

Considered as a declaration of a new system of maritime law, intended to guard neutral rights and check the supreme dominion of the English navy, it is far from deserving the importance attached to it at the time. In the first place it took its rise in an accidental intrigue, and was never at any time more than a diplomatic by-play of temporary interest. It passed its short life without activity, and died of natural exhaustion: and the Empress herself judged it rightly when she told Lord Malmesbury that it should be called rather *nullité armée* than *neutralité armée*. The great maritime belligerent Powers who acceded to it, never recognized its principles except when convenient, and it did not even reflect the practice of Russia itself. For in a despatch dated 26th May, 1780, Lord Malmesbury says of Admiral Greig, an eminent officer in the Russian service, "As soon as he read the declar-

ation and saw the grounds on which the instructions were to be made, he collected the various sentences which had been pronounced last war in the Archipelago by the Russian tribunal instituted for that purpose, and at which he frequently presided, on neutral ships. After proving in the clearest manner that they confiscated and condemned Turkish property wherever they found it, and the only prizes they made were such property on board neutral ships, he gave in the whole to Count Czernicheff, signifying that as a faithful and affectionate servant of the Empress he thought himself obliged to set before her eyes, that if she carried her present measures into execution she would act in direct contradiction to herself.”<sup>1</sup>

In the next place the declaration, “free ships, free goods,” was not the statement of a principle, but the expression of an interest—an interest as shifting as any of those movable necessities which have always regulated political combinations, never recognized in war by those very belligerents who have declaimed about it in peace. The effort to elevate it into an international law has been only a struggle to legalize one sort of selfishness at the expense of another; and such a rule can take its place only in a system which, in the emphatic language of Sir Wm. Scott, “if it is consistent, has for its real purpose an entire abolition of capture in war—that is, in other words, to change the nature of hostility as it has ever existed among mankind, and to introduce a state of things not yet seen in the world—that of a military war and a commercial peace.”<sup>2</sup>

The Congress of the United States, however, fancied that they saw in the sentiment of this purely selfish coalition, indication of such a general liberality of political judgment as would respond to the spirit of their resistance. Although discouraged by the more sober wisdom and better information of the French Court, they expressed in strong resolutions their approbation of the code of the neutrality, forwarded these resolutions through Mr. Adams to the various Courts who had entered into the league, and finally, on December 19, 1780, despatched Mr. Francis Dana as Minister to St. Petersburg. In their instructions they say to him, “You will readily perceive that it must be a leading and capital point if these United States shall be formally admitted as a party to the convention of the neutral maritime Powers for maintaining the freedom of commerce. This regulation, in which

<sup>1</sup>*Malmesbury's Diaries*, etc., vol. 1, p. 264.

<sup>2</sup>Judgment of the High Court of Admiralty upon the Swedish convoy, in the case of the ship *Maria*, Paulsen, master.

the Empress is deeply interested, and from which she has derived so much glory, will open the way for your favorable reception, which we have greater reason to expect, as she has publicly invited the belligerent Powers to accede thereto.”<sup>1</sup>

One would have supposed that the maintenance of their own freedom was quite enough for the attention of Congress; and it was, to say the least, a broad interpretation of Catharine's invitation to suppose themselves included under the term belligerents. But it must be said for the statesmen of that day, that they never forgot what they intended to be; and the uniform language of their diplomacy was bold even to what their circumstances might have stigmatized as presumption. But the anxiety with which they sought to introduce themselves into the affairs of Europe was ample evidence that they did not intend their independence to be isolation. They had resolved to be one of the nations of the earth—one to whom the politics of the world were to be matter of practical interest, and they considered their commerce as the means of direct connexion. It will be now generally admitted that any participation by the United States in this coalition would have been a useless complication of their affairs, serving no national purpose and contributing to no general good. The opportunity, however, was never offered; for Mr. Dana's efforts, however able, were very useless. His presence in St. Petersburg resulted only in affording Lord Malmesbury the small triumph of preventing his public reception by Russia, even after the acknowledged independence of the United States, and enabling him to close his career of disappointment at that Court by trusting that he had “suspended the appearance of the *American agent* here in public, till such time as it may take place without having any disagreeable or extraordinary effect.”<sup>2</sup>

**TWISS:** *The Law of Nations considered as Independent Political Communities. On the Rights and Duties of Nations in Time of War.* Second edition. London, 1875.

<sup>1</sup>*Secret Journal of Congress*, vol. 2, p. 358.

<sup>2</sup>*Malmesbury's Diaries*, etc., vol. 1, p. 506. Despatch to Lord Grantham, March 11, 1783.

Sir Travers Twiss. English jurist and publicist; born in 1809; died in 1897. Professor at the University of Oxford; member of the Institute of International Law. In 1840 he was called to the bar at Lincoln's Inn and became an advocate at Doctors' Commons. During his very successful legal career he enjoyed a large practice in the ecclesiastical courts, holding many positions incidental thereto, was professor of international law at King's College, London, queen's counsel, advocate general to the admiralty, and queen's advocate general. He also served upon a great number of royal commissions dealing with such matters as marriage law, neutrality, naturalization and allegiance, and was invited by the King of the Belgians to draw up the constitution of the Congo Free State.

Among the more notable of his numerous publications are *The Rights and Duties of Nations in Time of Peace*, 1861, second edition, 1884; and *The Rights and Duties of Nations in Time of War*, 1863, second edition, 1875. The two works appeared in French in 1887.

*Page 268.*—One result of the armed neutrality of 1780 was to lay the foundation of a common concert amongst the continental Powers on the subject of contraband of war, although such concert could only take effect amongst the Powers which were parties to the treaties and declarations;<sup>1</sup> for it was not attempted on occasion of either of the armed neutralities of 1780 or 1800 to set aside the treaty-engagements as to contraband of war, which existed between Great Britain and the Powers respectively which were parties to either armed neutrality; on the contrary, there were express stipulations that in the matter of contraband, each State should adhere to its existing engagements with other States. It is consistent therefore with the custom of contracting which prevails amongst the European Powers, that the same nation should have different conventions on the subject of contraband of war with different nations. "Hence it arises, that the catalogue of contraband has varied very much," as observed by Lord Stowell, "and sometimes in such a manner as to make it very difficult to assign the reason of the variations, owing to particular circumstances, the history of which has not accompanied the history of the decisions."<sup>2</sup>

<sup>1</sup>The declarations of Prussia on the subject of contraband of war will be found at *post*, p. 398; and that of Austria, *post*, p. 404.

<sup>2</sup>The *Jonge Margaretha*, 1 Ch. Robinson, p. 192.

**WALKER:** *The Science of International Law*. London, 1893.

Thomas Alfred Walker. Contemporary English publicist and clergyman; born in 1862; fellow and lecturer of Peterhouse College, Cambridge; senior Whewell scholar in international law, 1884; examiner in constitutional history, roman law and jurisprudence in University of London; member of the International Law Association and of several other societies interested in international and social problems. Among his publications are: *The Science of International Law*, 1893; *A Manual of Public International Law*, 1895; *A History of the Law of Nations*, 1 volume, 1899.

*Page 303.*—The armed neutrality of 1780 was an outcome of the intrigues of Count Panin working in the interests of France and Prussia upon the vanity of the Empress Catharine, who was herself well-inclined to British views.<sup>1</sup> Already in 1778 Sweden and Denmark had approached the Empress with formal proposals for the formation of a combined fleet for the protection of the neutral trade of the north against all attack.<sup>2</sup> It was not until early in 1780 that, chafing under the indignities to which she deemed herself to have been subjected by the submission of her neutral commerce to the belligerent right of search she caused to be presented to the three belligerent Courts of London, Versailles and Madrid a declaration, wherein she set out certain principles which, without departing from the strict and rigorous neutrality which she had hitherto inviolably observed, she expressed herself determined alike to adopt and effectively defend.<sup>3</sup> She took this step, she said, with the more confidence "qu'Elle trouve consignés ces principes dans le droit primitif des peuples, que toute nation est fondée à réclamer, et que les Puissances belligérantes ne sauroient les invalider sans violer les loix de la neutralité, et sans désavouer les maximes qu'elles ont adoptées, nommément dans différens traités et engagements publics."

<sup>1</sup>*Diaries and Correspondence of the Earl of Malmesbury*, vol. 1, pp. 219 *et seq.* Sir J. Harris to Viscount Stormont, April 24/May 5, 1780, *ibid.* 299. Same to Same, 15/26 May, 1780, *ibid.* 307. Sir James Harris to Hugh Elliott, 7/18 February, 1782, *ibid.* 485 *et seq.*

<sup>2</sup>Mr. Harris to the Earl of Suffolk, 11/22 Dec., 1778, *Diaries and Correspondence of the Earl of Malmesbury*, vol. 1, pp. 219–220. Lord Hillsborough was unfortunate enough to excite the wrath of Catharine by a jesting remark that "Her Imperial Majesty's commercial navy was already the best guarded in Europe, as she had a man-of-war to each merchantman." *Ibid.* 219.

<sup>3</sup>Declaration of Her Majesty the Empress of all the Russias to the Courts of London, Versailles and Madrid, *post*, p. 273.

The principles proclaimed in this imposing fashion in the name of neutrality and universal justice are set forth in five articles.

1. Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre.

2. Que les effets appartenans aux sujets des dites Puissances en guerre, soyent libres sur les vaisseaux neutres à l'exception des marchandises de contrebande.

3. Que l'Impératrice se tient quant à la fixation de celles-ci à ce qui est énoncé dans l'Art. X et XI de son traite de commerce avec la Grande-Bretagne, en étendant ces obligations à toutes les Puissances en guerre.

4. Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la disposition de la Puissance, qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.

5. Que ces principes servent de règle dans les procédures et les jugemens sur la légalité des prises.<sup>1</sup>

These articles became the basis of the first armed neutrality.<sup>2</sup> The reception accorded to the imperial declaration by the various Powers of Europe, and its ultimate fate forms a sufficient comment upon its character.

Great Britain, struggling desperately with a host of foes, with the combined force of her revolted colonies and of her ancient enemies France and Spain, could little afford to forfeit the good-will of the first Power of the North. Yet the British Government, preferring to risk the loss of an all-powerful ally rather than adopt that attitude of politic complaisance which their ambassador at St. Petersburg—the astute and able Harris<sup>3</sup>—urgently advised,<sup>4</sup> returned a reply of simple and unyielding dignity. During the whole course of the war, said the

<sup>1</sup>*Post*, p. 641.

<sup>2</sup>The precise extent of the term *contraband* being in the various acts of accession set out in detail, and the fifth article of the Imperial program being further explained, the principles of the first armed neutrality were four; see *post*, p. 299.

<sup>3</sup>James Harris, afterwards first Earl of Malmesbury, a diplomatist whose eminent abilities displayed in a peculiarly successful career amply justified Mirabeau's fear of "cet audacieux et rusé Harris" and Talleyrand's opinion of him as the most able English minister of his day. *Diaries and Correspondence of James Harris, First Earl of Malmesbury*, edited by his grandson, the third Earl. Introductory Memoir, xvii.

<sup>4</sup>Harris to Viscount Stormont, 13/24 Dec., 1780, *Diaries and Correspondence of the Earl of Malmesbury*, vol. 1, pp. 368-9.



Ministers of George III, in which His Majesty was then engaged in consequence of the aggression of France and Spain, he had manifested those sentiments of justice, equity and moderation which were wont to govern all his dealings. He had regulated his conduct towards friendly and neutral Powers in accordance with theirs in his regard, conforming it to the clearest and most generally recognized principles of the law of nations—the sole standard for nations who were bound by no particular treaty—and to the tenor of his different engagements with other Powers, engagements which had varied the normal law by mutual stipulations, and that in many various ways, according to the will and convenience of the contracting parties. Firmly bound to Her Imperial Majesty by the ties of mutual amity and of common interest, he had from the very beginning of the war given strict orders for the display of respect to her flag and to the commerce of her subjects, in accordance with the law of nations, and the tenor of his engagements with her, engagements which he would fulfil with the most scrupulous precision. These orders had been renewed, and, should the least violation occur, his admiralty tribunals, guided in their decisions solely and entirely by the general law of nations and the stipulations of particular treaties, would redress the wrong in such fashion, that Her Majesty would recognize in their judgments that spirit of justice by which she was herself animated.<sup>1</sup>

A singular contrast to this calm and self-respecting language was afforded by the enthusiastic acclamations of France and Spain.

Louis XVI, moved by no other inducement in the war in which he found himself engaged than by the attachment which he felt for the principle of the liberty of the seas, could only experience a lively satisfaction in seeing the adoption of that same principle by Imperial Russia. “Ce que Sa Majesté Impériale réclame de la part des Puissances belligérantes, n’est autre chose, que les règles prescrites à la marine Française, et dont l’exécution est maintenue avec une exactitude connue et applaudie de toute l’Europe.” It would be unnecessary for His Majesty to give new orders for the care of neutral navigation over and above the ordinary regulations in force, since the Empress had declared for a system which His Majesty maintained at the price of his people’s blood, and had demanded those very laws

<sup>1</sup>Reply of the Court of London to the declaration of the Empress of Russia concerning neutral commerce, dated Feb. 28, 1780, and presented at the Court of London, April 1, 1780, *post*, p. 282.

which he would desire to make the basis of the maritime code of all nations.<sup>1</sup>

The rules proposed by the Empress of Russia, declared His Catholic Majesty, then engaged in the blockade of Gibraltar, were those which had always guided his conduct, and which he as a neutral had tried by all means possible, but without effect, to induce England to adopt, and which only the conduct of that Power had compelled him as a belligerent to depart from in self-defense.<sup>2</sup>

Nor were other Powers wanting to swell the chorus of applause. Denmark<sup>3</sup> and Sweden,<sup>4</sup> who had been the first to agitate for the formation of an armed neutral league, Prussia,<sup>5</sup>—whose ruler was now animated by the most inveterate hostility towards England,—Austria<sup>6</sup> and the Empire,<sup>7</sup> the Two Sicilies<sup>8</sup> and Portugal<sup>9</sup> acceded to the armed neutrality. It was in vain that Great Britain appealed to the faith of treaties and to the history of the past.<sup>10</sup> Her utmost efforts hardly sufficed to restrain the Empress from active furtherance of her principles.

The Dutch, too, between whom and the English a rupture had been swiftly preparing in consequence of the refusal by Holland of the assistance to which she was bound by treaty with England, and of the intimate relations of amity and commerce entered into between the United Provinces and the revolted American colonies,<sup>11</sup> hastened to secure admittance into the neutral league.<sup>12</sup> It seemed as though the whole civilized world were rising against the maritime supremacy of England. But England was not slow to accept the challenge. Four

<sup>1</sup>Reply of the Court of France to the declaration of the Empress of Russia, April 25, 1780, *post*, p. 284.

<sup>2</sup>Reply of the Court of Spain to the declaration of the Empress of Russia, April 18, 1780, *post*, p. 279.

<sup>3</sup>July 9, 1780. *Post*, p. 299.

<sup>4</sup>September 9, 1780. *Post*, p. 322.

<sup>5</sup>May 8/19, 1781. *Post*, p. 397. Sir James Harris to Viscount Stormont, 30 April/11 May, 1781, *Diaries and Correspondence of the Earl of Malmesbury*, vol. 1, p. 420.

<sup>6</sup>1784-5, Martens, *Recueil*, vol. 2, p. 620.

<sup>7</sup>October 9, 1781. *Post*, p. 403.

<sup>8</sup>February 10/21, 1783. *Post*, p. 433.

<sup>9</sup>July 13/24, 1782. *Post*, p. 420.

<sup>10</sup>"Treaties can be changed only by mutual agreement of the contracting Parties, and as long as they are in force, they are equally binding upon both." Reply of the Court of London to the declaration of the King of Sweden, *post*, p. 317.

<sup>11</sup>*Diaries and Correspondence of the Earl of Malmesbury*, vol. 1, pp. 341, 380; *post*, p. 277.

<sup>12</sup>December 24, 1780/January 4, 1781. *Post*, p. 346

days before<sup>1</sup> the acceptance of the accession of Holland to the armed neutrality the British had, to the astonishment of Russia and the no small rage of Frederick,<sup>2</sup> declared war against the United Provinces, and the Dutch, struggling in vain to enlist the active assistance of the neutral Powers, secured but a bare offer of mediation, and were obliged to bear the full brunt of an unsuccessful war.<sup>3</sup>

The principles of the armed neutrality had not been sanctified by the practice of the parties to it in days before their trading profits were bound up with the interests of the neutral flag, and were violated by those same parties when first they exchanged their neutral character for that of belligerents. So far were France and Spain from adopting before 1780 the principle "free ships, free goods" that they regularly asserted the principles of "enemy ships, enemy goods," and "enemy goods, enemy ships," principles now kept carefully in the background. Up to the very moment of the presentation of the imperial declaration Spain followed the stricter practice with such severity as well-nigh drove Russia in self-defence into the arms of England.<sup>4</sup> Russia herself had during her recent Turkish war confiscated Turkish property wherever found, and the only prize she made was, as her Admiral honestly confessed, of such property captured under the neutral flag.<sup>5</sup> And in their war of 1788 Russia and Sweden alike renounced the principles which they had publicly declared for but eight short years before.<sup>6</sup>

After the movement of 1778-80, indeed, the combined rules "free ships, free goods; enemy ships, enemy goods" advanced in favor, and were embodied in numerous treaties. France now taking the lead in their support.<sup>7</sup> But there was still no perfect consistency in the engagements of the several Powers; sometimes the principle "free ships,

<sup>1</sup>December 20, 1780. *Post*, p. 334.

<sup>2</sup>"Puisque les Anglais veulent la guerre avec tout le monde, ils l'auront," cried Frederick when he heard of the English declaration. Mr. Elliott to Viscount Stormont, *Diaries and Correspondence of the Earl of Malmesbury*, vol. 1, p. 383.

<sup>3</sup>*Ibid.*, 385; Martens, *Recueil*, vol. 4, pp. 389 *et seq.*

<sup>4</sup>*Diaries and Correspondence of the Earl of Malmesbury*, vol. 1, pp. 278-279.

<sup>5</sup>Sir James Harris to Viscount Stormont, 15/26 May, 1780, *Diaries and Correspondence of Earl of Malmesbury*, vol. 1, p. 306.

<sup>6</sup>Cf. Martens, *Recueil*, vol. 6, p. 210.

<sup>7</sup>Treaties of France and U. S. 1778, France and Mecklenburg 1779, Holland and U. S. 1782, Sweden and U. S. 1783, France and Great Britain 1786, France and U. S. 1800. Martens, *Recueil*, vol. 1, p. 695; 2, pp. 41, 255, 332, 693; 7, pp. 56 and 490; Chalmers, *Treaties*, vol. 1, p. 530.

free goods" was adopted without the companion jingle;<sup>1</sup> sometimes a different rule was followed by the same Power at the same period with different States, or even with the same State at different periods.<sup>2</sup> In the main, however, the principle of the freedom of the neutral flag seemed well on the way to general acceptance, when a new phase was entered upon in the outbreak of the wars of the French Revolution. The passions of the combatants in that great struggle were aroused too fiercely for any improved regard of neutral rights. France in declaring good prize the goods of an enemy found under the neutral flag<sup>3</sup> was the first to repudiate her recently formed engagements, and Russia herself abandoned the high moral notions of which she had been the fervent preacher, to adopt with England "the principle generally recognized and the precepts of the law of nations,"<sup>4</sup> to wit, that old rule of the *Consolato del Mare* which her ally had so long and so consistently maintained. Nor were the rest of the parties to the armed neutrality slow to follow this suggestive example.<sup>5</sup> The United States remained, and for obvious reasons, the only consistent supporter of the privilege of the neutral carrier.<sup>6</sup>

But the day of "free ships, free goods" was not yet over. In the first few months of the year 1800 A. D. the northern Powers again drew together in the second armed neutrality.<sup>7</sup> Arising immediately in the resentment of the mad Emperor Paul at the conduct of Great Britain in retaining the island of Malta in contravention of what he conceived to be his rights as Grand Master of the Knights of St.

<sup>1</sup>Treaties of France and Holland 1785, Prussia and U. S. 1785, France and Hamburg 1789, U. S. and Spain 1795, U. S. and Tripoli 1796, Russia and Portugal 1798. Martens, *Recueil*, vol. 2, pp. 571, 616; 3, p. 159; 6, p. 574; 7, pp. 147 and 267.

<sup>2</sup>Treaty of U. S. and Great Britain, 1795. Martens, *Recueil*, vol. 6, p. 368.

<sup>3</sup>See the Decrees of the National Convention of May 9 and July 17, 1793, and the Arrêté of the Executive Directory of March 2, 1797, Martens, *Recueil*, vol. 6, pp. 757-9 and 769.

The Law of Jan. 18, 1798, laid down the principle that "L'état d'un navire, en ce qui concerne la qualité de neutre ou d'ennemi, est déterminé par sa cargaison." All vessels carrying English goods were accordingly declared good prize. Martens, *Recueil*, vol. 6, pp. 774-5.

<sup>4</sup>Treaty of Great Britain and Russia 1797, Article 10, *post*, p. 445; see Martens, *Recueil*, vol. 5, pp. 109, 115.

<sup>5</sup>Treaties of Great Britain and Spain, Great Britain and Prussia, Great Britain and the Empire 1793, *ibid.*, pp. 150, 168, 170.

<sup>6</sup>Treaties of U. S. and Spain 1795, U. S. and Prussia 1789, U. S. and France 1800. Martens, *Recueil*, vol. 6, pp. 154 and 676; 7, p. 103.

<sup>7</sup>*Traité et autres actes relatifs à la nouvelle association maritime*. Martens, *Supplément*, vol. 2, pp. 344-475.

John,<sup>1</sup> its more public occasion was the recent irritation caused in the North by the attitude of England on the subject of the protection afforded by neutral convoy.<sup>2</sup>

Early in the second half of the eighteenth century Sweden and Denmark had attempted to set up as a neutral right the immunity from belligerent search of merchantmen sailing under the convoy of a neutral man-of-war.<sup>3</sup> The question, however, became of more pressing importance in the last decade of the century, when the number of such convoys was largely increased in consequence of the action of the combatants in the French revolutionary struggle, and more especially after the issue of the French decrees denouncing the penalty of confiscation against the neutral ship-owner who should engage in carrying English goods, and the pirate's death to the neutral seaman who should venture to sign articles in the English service.<sup>4</sup> Then the irritation of the disputants rose to fever heat in consequence of a succession of exciting incidents.

In 1798 a Swedish convoy was after some slight display of force in the British Channel brought in for adjudication in the British Prize Court, and condemned by Sir William Scott on the ground of resistance.<sup>5</sup>

In December, 1799, occurred a more spirited affair in the straits of Gibraltar between the English squadron of observation and a Danish convoy, the Danish commander, in pursuance of his instructions, firing on the boats of the English search party. Mr. Merry, the Chargé d'Affaires at Copenhagen, immediately demanded an explanation and disavowal of the action of the Danish captain.<sup>6</sup> Count Bernstorff, however, far from complying with the demand, sought to justify the conduct of the officer, coupling with a denial of the right of belligerents to search merchantmen under convoy an answering demand for reparation.<sup>7</sup>

The dispute was still unsettled when on July 25, 1800, the Danish

<sup>1</sup>*Post*, p. 516.

<sup>2</sup>Manning, *Law of Nations*, bk. 5, ch. 11.

<sup>3</sup>The principle was adopted in the following treaties: United States and Prussia, 1785, France and Russia, 1786-7, Two Sicilies and Russia, 1787, Portugal and Russia, 1787 and 1798, United States and France, 1800. Martens, *Recueil*, vol. 2, p. 572; 3, pp. 17, 45, 119; 7, pp. 266, 493.

<sup>4</sup>Arrêté of the Executive Directory of Oct. 29, 1798.

<sup>5</sup>The *Maria*, 1 C. Rob. 340.

<sup>6</sup>Mr. Merry to Count Bernstorff, April 10, 1800, *post*, p. 471.

<sup>7</sup>Count Bernstorff to Mr. Merry, April 19, 1800, *post*, p. 474.

and British navies again came into hostile collision, and Captain Krabbe of the *Freya*, a Danish frigate conveying six merchantmen, having refused to permit the search of his charge in the British Channel, was, after a smart action with a British squadron, brought in with the convoy to the Downs.<sup>1</sup> The Danish Government in their turn demanded prompt satisfaction for this most public insult to their neutral national flag, and an immediate restitution of the captured vessels. But Great Britain showed no sign of a willingness to yield. Lord Whitworth was instantly despatched on a special mission to Copenhagen, but a British fleet entered the Sound to lend weight to his representations. A lively passage at arms ensued,<sup>2</sup> Great Britain defending the action of her officers as grounded in the plainest principles of the law of nations, whilst Count Bernstorff treated the capture of the convoy as an altogether unwarranted invasion of neutral rights. Finally, however, the negotiators agreed on August 29, 1800, upon a convention for the temporary settlement of the contested question.<sup>3</sup> But a new and more formidable disputant was already in the field. On August 15, 1800, the Emperor Paul, to whom the Danish Government had made early approaches, issued a declaration wherein, reciting the history of the recent action of the English with regard to neutral convoys, he invited Sweden, Denmark, and Prussia to concur with him in measures for the establishment in full force of the principles of the armed neutrality.<sup>4</sup> Nor did Paul content himself with empty words. Apprised of the appearance of the English squadron in the Sound, he ordered the sequestration of all English property within his dominions. The arrival of the news of the signature, on the very day (Aug 29) of the issue of his edict, of the Anglo-Danish convention momentarily disconcerted his plans, but, a new source of irritation against England being inopportunately supplied by the non-fulfilment of his singular Maltese dreams, he started afresh on his career of violence. An embargo was laid on British shipping in Russian ports, and, when two British vessels made their escape by force from their anchorage in the port of Narva, a third which remained was committed to the flames. Nor were other Powers wanting to excite to frenzy a brain but too palpably disordered. Spain lent fuel to the

<sup>1</sup>Count de Wedel-Jarlsberg to Lord Grenville, July 29, 1800, *post*, p. 476. *Memoirs and Correspondence of the Marquis Wellesley*, vol. 2, p. 116.

<sup>2</sup>*Post*, pp. 482-489.

<sup>3</sup>*Post*, p. 492.

<sup>4</sup>August 27, 1800, new style. *Post*, p. 489.

conflagration by complaining of the irregular impressment by an English squadron of a Swedish galliot for the purpose of cutting out a couple of Spanish frigates in the harbour of Barcelona,<sup>1</sup> and Prussia supported her in an extraordinary and altogether unjustifiable demand upon Sweden for the release of the captured vessels. It was a singular view of neutral rights which was expounded by these strange allies: Spain excluded all Swedish vessels from her ports by way of reprisal for the refusal of Sweden to be hurried into forcible measures against England,<sup>2</sup> and Prussian troops entered the ports of the neutral city of Hamburg because an Embden contraband trader captured by the English had been driven by stress of weather into the sheltering harbour of Cuxhaven.<sup>3</sup>

But of little avail with the Powers of the North were arguments merely verbal.

In December, 1800, Denmark, Sweden and Prussia united with Russia in the second armed neutrality

The guiding principles of the new league were set out in the main in five articles, which added to the four rules of 1780 a fifth dealing with the subject of convoy.<sup>4</sup>

Denmark, taken to task by Great Britain in respect of her accession to a combination for the support of principles diametrically opposed to the spirit of the convention but just concluded, unhesitatingly avowed her adhesion to the northern alliance, and called upon her questioner to admit "Que l'abandon provisoire et momentané, non d'un principe, dont la question est restée indécise, mais d'une mesure, dont le droit n'a jamais été, ni ne sauroit jamais être contesté, ne se trouve nullement en opposition avec les principes généraux et permanens, relativement auxquels les puissances du Nord sont sur le point de rétablir un concert, qui loin de pouvoir compromettre leur neutralité, n'est destiné qu'à la raffermir."<sup>5</sup>

But Great Britain, now more free than in 1780 to deal with the self-constituted prophets of neutral right, was in no humor to stomach

<sup>1</sup>Ortolan, *Diplomatie de la mer*, vol. 2, bk. 3, ch. 1, pp. 30-31, and *Pièces justificatives B*.

<sup>2</sup>See the correspondence between the Spanish and Swedish Governments, *post*, pp. 507-512, 553.

<sup>3</sup>*Post*, pp. 513-519; Martens, *Recueil*, vol. 7, p. 164.

<sup>4</sup>See conventions between Russia and Sweden, Russia and Denmark and Russia and Prussia (December, 1800), *post*, pp. 531-549.

<sup>5</sup>Count Bernstorff to Mr. Drummond, December 31, 1800, *post*, p. 554.

either the veiled hostility of Bernstorff or the overweening insolence<sup>1</sup> of Haugwitz. A war of embargoes speedily led on to open rupture. Parker and Nelson forced the passage of the Sound, and crushed the Danish naval power in the bloody battle of Copenhagen;<sup>2</sup> the Danish and Swedish possessions in the West Indies surrendered in quick succession to Duckworth and Trigge;<sup>3</sup> and British troops occupied without a show of resistance Serampore and Tranquebar.<sup>4</sup> Humbled at home and stripped of all their foreign dominions, the Danes were in no condition to prolong an unequal struggle, and the cruel murder of Paul<sup>5</sup> opened a speedy way to the accommodation of differences. Early in June, 1801, a maritime convention<sup>6</sup> was signed at St. Petersburg between the Ministers of George III and the new Emperor Alexander. The treaty may be regarded as a compromise. Great Britain, confirming the definition of contraband set out in her last treaty of commerce with Russia, agreed expressly to adopt three principles of the armed neutrality which she had not hitherto contested. She admitted the right of neutrals to navigate freely between the ports and on the coasts of nations at war, she acknowledged that blockade to be binding must be effective, and she assented to the necessity for the administration by belligerents in their dealings with neutrals of speedy and uniform justice. But she vindicated against the neutral Powers the right of search of merchantmen under convoy as exercised by *men-of-war*, and established the liability to seizure by a hostile captor of goods being actually the property of the subject of a belligerent laden under the neutral flag.<sup>7</sup>

**WEHBERG:** *Das Seekriegsrecht* (Article in *Handbuch des Völkerrechts*, ed. Stier-Somlo, volume 4, Berlin. 1915).

Hans Wehberg. Contemporary German publicist; born in 1885; doctor of laws; Gerichtsassessor at Düsseldorf; formerly associate editor of the *Zeit-*

<sup>1</sup>Count Haugwitz to Lord Carysfort, February 12, 1801. *post*, p. 578

<sup>2</sup>April 2, 1801.

<sup>3</sup>Martens, *Supplément*, vol. 2, p. 466.

<sup>4</sup>*Memoirs and Correspondence of the Marques Wellesley*, vol. 2, ch. 5.

<sup>5</sup>*Diaries and Correspondence of the Earl of Malmesbury*, vol. 4, pp. 54-56.

<sup>6</sup>*Post*, p. 595.

<sup>7</sup>See Article 3, *post*, p. 597.



*schrift für Völkerrecht*. He graduated from the Gymnasium of Düsseldorf and attended the universities of Jena, Göttingen and Bonn.

Dr. Wehberg has written extensively upon subjects dealing with international law, such as: *Das problem eines internationalen staatengerichtshofes*, 1912, and *Das beuterecht im land- und seekriege*, 1909, both of which have also appeared in English.

*Page 29.*—England's struggle against the American colonies had begun in 1776 in consequence of the American Declaration of Independence. In 1778 France, and in 1779 Spain, took sides with the "thirteen united colonies."

Ere long, the United States of America and France declared that with the exception of contraband, enemy goods on neutral ships should be free. This action was most surprising on the part of France, because the earlier ordinances had decreed the contrary. But this generous action which France sustains later on, is explainable by virtue of the necessary consideration that had to be shown the neutrals whose good-will France did not wish to lose in the course of her great war with England.<sup>1</sup> With regard to the matter of contraband, France and the United States were likewise disposed to a generous attitude. On the other hand, England and Spain gave the widest interpretation to the idea of contraband and applied the right of blockade and the prize law in the most rigorous fashion. While hitherto, in accordance with the fundamental principle of the *Consolato del Mare*, England had seized enemy goods on neutral ships, and on the other hand, had spared neutral property on enemy ships, she like Spain now accepted the principle that neutral goods on enemy ships might be seized.<sup>2</sup> The English prize courts furthermore regarded the French and Spanish ports as blockaded, merely by reason of the situation of England. They applied the *droit de prévention*, in consequence of which neutral ships which were making for a port which had been declared blockaded, could at any distance from such port be seized on the ground of breach of blockade; and furthermore, they were in favor of the *droit de suite*, in consequence of which ships suc-

<sup>1</sup>See Strupp, *Urkunden*, vol. 1, p. 71. where the French regulation of July 26, 1778, is reprinted, and also de Boeck, *De la propriété privée ennemie*, pp. 58, *et seq.*; Fauchille, *La diplomatie française*, pp. 59 *et seq.*; also the ordinance of the King of France of June 24, 1778 relative to privateering and reported in Strupp, vol. 1, pp. 68 *et seq.* This ordinance renewed the harsh prescriptions of the ordinance of 1681. Fauchille, p. 68.

<sup>2</sup>Fauchille, pp. 2 *et seq.*

cessfully running the blockade could be seized up to the moment of their arrival at the port to which they were bound.

In view of the interference with neutral commerce which had taken place, Russia, Sweden and Denmark united in 1779 for the purpose of neutralizing the maritime course along the North Sea, that is to say, they sought by the stationing of war-ships, to prevent interference with the merchant ships of the allied States along the eastern coast of the North Sea. The said States had already reached a similar agreement in 1758-1760,<sup>1</sup> as has been shown by Bergbohm.<sup>2</sup> The neutralization of the North Sea was the preliminary act for the first armed neutrality to which reference will be made hereinafter. For with the beginning of the negotiations which led to the neutralization of the North Sea, those principles had already been set forth by the Danish Minister, Count Bernstorff, and by the emphasis laid upon these principles, the armed neutrality has become a great event. It is, however, incorrect to say, as has been said by Geffcken,<sup>3</sup> by Bergbohm<sup>4</sup> and by Niemeyer<sup>5</sup> that Bernstorff is for that reason the spiritual originator of the armed neutrality. For in his thorough searches, Fauchille<sup>6</sup> has shown that even before Bernstorff, the French Minister, Vergennes, had suggested to Russia the formation of an armed neutrality. It may be added that the alliance of the Powers in the year 1779 for the neutralization of the North Sea led to no direct results. Only unimportant conferences between them took place.

Since the moment when France had taken sides with the United States, England had left no stone unturned to win Russia over to her side. In the course of the war, England even refrained, whenever the opportunity arose, from searching Russian ships, though they might have had enemy goods on board. The English Ambassador, Sir James Harris, endeavored to his utmost, to win Russia over to the side of his country. In view of the fact that Catherine II entertained much sympathy for England<sup>7</sup> it looked as though these efforts

<sup>1</sup>Bergbohm, *Die bewaffnete Neutralität*, p. 48; Poels, *Darstellung des gemeinen deutschen*, vol. 3, p. 1207; v. Prittwitz und Gaffron, p. 24.

<sup>2</sup>*Op. cit.*, p. 104.

<sup>3</sup>Extracts on *Seekriegsrecht* and *Neutralität* in *Handbuch des Völkerrechts*, Hamburg, 1889, vol. 4, p. 622.

<sup>4</sup>*Op. cit.*, p. 84.

<sup>5</sup>*Urkundenbuch*, p. 1.

<sup>6</sup>*Op. cit.*, p. 209.

<sup>7</sup>Fauchille, pp. 20, 60.

might not remain fruitless. For political reasons, however, Count Panin, the Russian Chancellor, did not regard military aid to England as opportune, and he exerted all his influence to keep the Empress from entering into the planned alliance. France also left no stone unturned to induce Russia to remain neutral.<sup>1</sup> In spite of this, and after many failures, the English Ambassador seemed nevertheless near success by the beginning of the year 1780. The Spaniards had captured Russian ships at two different times (in the opinion of the neutrals these had been unlawful seizures). The moment seemed favorable for England. In February, 1780, Catherine II ordered a fleet of fifteen ships mobilized. Through a complication of diplomatic incidents, this plan of fitting out ships to ward off Spanish attacks, was however changed in such a manner that the effect of it rebounded against England.<sup>2</sup> On February 28, 1780, Russia forwarded a declaration to the Courts of London, Versailles and Madrid, which, according to the most recent researches of Fauchille, had been prepared in cooperation between the French and Russian diplomatists, and finally carried out by Empress Catherine herself. The declaration was not forwarded to Washington for the reason that the colonies were regarded as renegade rebels.<sup>3</sup>

In the famous declaration<sup>4</sup> the Empress of Russia complained in regard to the losses occasioned to neutral navigation and declared that it was her earnest intention to prevent these thenceforth. She demanded that the following principles should be respected as fundamentals in the law of nations:

1. That neutral ships may freely sail from port to port and along the coasts of the belligerent States;<sup>5</sup>

<sup>1</sup>Fauchille, pp. 58-66.

<sup>2</sup>Bergbohm, pp. 224 *et seq.*; Fauchille, pp. 348 *et seq.*; v. Prittwitz und Gaffron, pp. 21 *et seq.*

<sup>3</sup>The Congress of the American Confederate States had, moreover, soon thereafter instructed the admiralty to act in conformity with the basic principles contained in the declaration of the Empress. See Albrecht's "*Die Stellung der Vereinigten Staaten zur bewaffneten Neutralität*," in *Zeitschrift für Völkerrecht*, vol. 6, pp. 436 *et seq.*

<sup>4</sup>*Post*, p. 273.

<sup>5</sup>Navigation between the ports of the same country are reserved to the national ship companies. During war time, this right of the so-called coastwise shipping was, however, granted to the neutrals. Various ordinances had been issued by which certain States forbade this freight shipping to the neutrals and penalizing them through the confiscation of both the ship and the cargo. But at the time of the American War of Independence, this matter had not become a problem of actuality, and special reasons were therefore lacking for incorporating this point in the declaration.

2. That goods belonging to the subjects of the belligerent Powers and placed on board neutral ships should be free;<sup>1</sup>

3. That in the matter of contraband, Articles 10 and 11 of the commercial treaty between Russia and England of 1766 should be authoritative and extended to all belligerent States;<sup>2</sup>

4. That a port should be regarded as blockaded only if by reason of measures taken by the attacking Power, that is, by means of stationary ships in sufficiently close proximity with each other, there is evident danger in entering such port;

5. That these principles should be applied in the procedures and decisions appertaining to the legality of the prizes.

The declaration contained the further statement that in order to defend the principles of the declaration, a part of the Russian fleet was held ready to sail out.

The answers of the belligerent Powers were of different tenor. England declared that she could not renounce her principle, according to which she would capture enemy goods even on neutral ships, but that as theretofore, she would continue even now to show particular respect for the Russian flag. France replied that from time immemorial she had followed the principles expressed in the declaration. Spain stressed the statement that she could not declare enemy merchandise on neutral ships exempt from capture till England herself had accepted the like principle, and that she would gladly accept the remaining principles contained in the declaration. Spain added to her answer that in regard to the most recent incidents which had led to the action of Russia, she denied all guilt in relation thereto and laid such guilt to the seafaring merchants who sought to make profit and in so doing were lending assistance to the enemy. It can not therefore be said that the result of the Russian declaration was of great importance. But in spite of this, Count Panin, the Russian Minister, stated that he was quite satisfied.

In the same ukase by which Empress Catherine had ordered the forwarding of the circular note to the belligerent Powers, she had also

<sup>1</sup>The declaration made no reference to the treatment of neutral goods on board enemy ships, and which were subject to seizure in accordance with the treaty of Utrecht. "This was the first time that these two propositions which hitherto had usually been joined were no longer found side by side," says Kleen, *Lois et usages*, vol. 1, p. 22. He adds that in all probability it had been the intention to renew the principle "unfree ship, unfree goods" of the treaty of Utrecht.

<sup>2</sup>That is to say, only immediate necessities of war should be treated as contraband.

directed that the project for a formal treaty with the neutral Powers in defense of maritime trade should be laid before her. Soon thereafter, negotiations with Denmark, Sweden, Holland and Portugal were started. The Danish Minister, Count Bernstorff, was highly displeased that the convention was to be extended to all neutral Powers. He was much more in favor of an alliance between Russia and Denmark alone. But he submitted in the end. In a declaration to the Courts of London, Versailles and Madrid, Denmark declared she would likewise have the principles enunciated by the Russian Government observed by her war fleet. A similar declaration was issued by Sweden after she had become convinced of the sincerity of the Russian Government. The answers of the belligerent Powers were analogous to the earlier ones. At the same time negotiations were opened on the part of Russia on the one side, and of Sweden and Denmark on the other, in reference to a formal treaty, and these negotiations led to two conventions, the one of June 28/July 9, 1780, between Russia and Denmark, and the other of July 21/August 1, 1780, between Russia and Sweden. But since these two conventions were of essentially the same tenor, they may be regarded as a single agreement to which has been given the name of the Russo-Dano-Swedish treaty of alliance of the year 1780 for the protection of neutral commerce and navigation. In this alliance it was precisely defined how the war-ships of the contracting Parties were in common to protect the commerce of their subjects. The other neutral States were invited to join the alliance. Holland, who during the American War of Independence had by all means endeavored to induce England to accept the right of convoy,<sup>1</sup> joined the alliance only in the month of January, 1781. Before her accession to the alliance had been notified to the belligerent Powers England had already declared war against the States General, so that Holland as a belligerent State could no longer be a member of a union of neutral Powers. On May 8/May 19, 1781, Prussia likewise joined the alliance.<sup>2</sup> The acceptance by Frederick the Great of the principles of the armed neutrality was the more obvious because with reference to the prize law he had repeatedly proposed even farther-reaching principles. Already in the instructions issued to privateers in the course of the Seven Years' War we meet with the principle "free ship, free goods, unfree ships, free goods."

<sup>1</sup>Mirbach, *Durchsuchungsrecht*, p. 75.

<sup>2</sup>Krauel, *Preussen und die bewaffnete Neutralität von 1780*.

which was subsequently incorporated in the Paris declaration in reference to maritime law. In the declaration of April 30, 1781,<sup>1</sup> this principle was again established. This principle certainly went beyond the principles of the armed neutrality; for the latter would not exempt from capture neutral goods found on board enemy ships.<sup>2</sup> While Prussia contracted with all three northern States, the treaty itself by which Austria joined the armed neutrality some four months later was concluded merely with Russia. Portugal and the Two Sicilies only joined the alliance after the hostilities between England and her adversaries had ceased. Nevertheless, the international principles of the armed neutrality had been accepted by no fewer than eight States. It is worthy of note that most of the signatory States of the armed neutrality issued thoroughgoing ordinances to their subjects by which authorizations and inhibitions were established in reference to their conduct in time of war.

Catherine II of Russia had for some time cherished the plan to secure acceptance of the principles of the first armed neutrality even beyond the time of the war then being waged, and had sought to establish the complete principles of the laws of maritime warfare in a maritime war code. Similar ideas had preoccupied King Gustavus III of Sweden and Joseph II of Austria.<sup>3</sup> Unfortunately, however, none of these plans was ever realized.

England had never accepted the principles of the armed neutrality. For a time she had been compelled by the unanimous procedure of the neutrals to conform to the principles of the declaration of 1780. Unfortunately, however, the originators of the armed neutrality did in the course of time renounce their own principles. In spite of this, the value of this in its kind important act of the Powers, must not be under-estimated. At first the idea that each State should not establish its own law for maritime warfare was vigorously advocated, that on the contrary, the community of interests demanded the acceptance of like principles. And while the declaration of the armed neutrality was incomplete for the reason that it established only special prin-

<sup>1</sup>*Post*, p. 391.

<sup>2</sup>The Prussian Government based the principle whose acceptance by the other nations it took for granted, upon the fact that it had already been established in the Aix-la-Chapelle peace of 1748, which, however, was not the case at all. Later on it based the principle upon the general principles of international law, which was likewise unjustified. See Krauel, *Preussen und die Freiheit neutraler Güter auf feindlichen Schiffen*, pp. 5-10.

<sup>3</sup>Bergbohm, pp. 204 *et seq*; Fauchille, pp. 579 *et seq*.

ciples, yet these principles were the more vigorously championed and in a form never before witnessed.<sup>1</sup>

In the first decade following the armed neutrality of 1780-1783, the former principle of the *Consolato del Mare*, "free ship, unfree goods," has not been incorporated in any treaty. Of course, this principle still remained a general principle of international law in case stipulations to the contrary had not been agreed upon. The latter proved indeed the case in many instances. England especially renounced capture of enemy goods on neutral ships in the Versailles treaty of peace with Spain and France. It was also in those days when the principle of the inviolability of private property in maritime warfare advocated by Abbot de Mably in France found its first practical realization through the commercial treaty of September 10, 1785,<sup>2</sup> between Prussia and North America by which the contracting Parties renounced the law of maritime prizes.<sup>3</sup> This treaty terminated in 1796, and in the subsequent commercial treaties between the two States of 1799 and 1828, the basic principle just mentioned was not repeated.<sup>4</sup> In 1792, Deputy Kersaint proposed in the French national assembly the issuing of a decree concerning the abolition of the law of maritime captures.<sup>5</sup> The negotiations which took place with other Governments by reason of this proposal, showed that on the part of the great maritime Powers there was no disposition to adopt measures of the nature proposed. Nevertheless, Austria, North America, Portugal, Denmark, Tuscany, Genoa and Naples expressed their approval of the proposal. The most favorable reply to the proposal was received from Hamburg, and between this city and France a momentary agreement was reached with regard to the abolition of the law of maritime captures. Furthermore, Napoleon returned time

<sup>1</sup>Bergbohm, p. 215; Kleen, vol. 1, p. 24; de Boeck, p. 59; Gessner, p. 43.

<sup>2</sup>Reprinted by Niemeyer, *Urkundenbuch*, p. 22, and by Strupp, *Urkunden*, vol. 1, pp. 82 *et seq.*; cf. Kapp, *Friedrich der Grosse und die Vereinigten Staaten von Amerika*.

<sup>3</sup>By this treaty, the principle "free ship, free goods" was expressly agreed to; cf. Krauel, *op. cit.*, p. 10.

<sup>4</sup>De Boeck, pp. 61 *et seq.*, states that the treaty of 1785 had become meaningless with regard to the law of maritime captures, because a war between the contracting Parties had not been within the reach of possibility. For this reason it had been thought unnecessary to repeat the said principle. This statement does not seem to meet the case. A war between two States was not absolutely impossible, and the insertion of the mere principle was not without favorable effect. Cf. Gessner, pp. 48 *et seq.*

<sup>5</sup>Niemeyer, pp. 122 *et seq.*; de Boeck, pp. 62 *et seq.*

and again to the French traditions in this respect but without reaching any practical results.

After the outbreak of the French Revolution, many States united against France. In the course of the wars that followed, French commerce was sharply attacked and French goods on neutral ships were seized. France answered in kind. The signatory States of the first armed neutrality trampled the latter's principles under foot. The Danish Minister, Count Bernstorff, alone persisted in his former humane views. The United States furthermore concluded with England in 1794 and with Prussia in 1799 a treaty by which the principle of the *Consolato del Mare* was reestablished. Prussia, of course, did this unwillingly. In the general national law of 1794 it had expressly confirmed the principle "free ship, free goods; unfree ship, free goods" established by its prize instructions of the Seven Years' War. But the American negotiators would not on their part have the principle "free ship, free goods" established in the treaty, for the reason that it had not been agreed to by the other nations.<sup>1</sup> On the other hand, the attitude of Prussia was responsible for the view that the principle "unfree ship, free goods" was not inserted at that time in the treaty, although the United States was desirous to do so. Viewed from this point, the attitude of Prussia has ever been logical with regard to the question of the law of maritime captures. It should still be observed that the treaty of 1785 set aside the angaria-right between the United States and Prussia. Even this stipulation was with important restrictions reincorporated in the new treaty of 1799.<sup>2</sup> On the other hand, the stipulation of the treaty of 1785 to the effect that contraband could be seized only through indemnification, was retained.

The war between England and France at the close of the eighteenth century developed more and more into a war of annihilation against their mutual commerce.<sup>3</sup> England assumed once more her theory of the fictitious blockade; necessities of life were listed as contraband when they were destined for enemy ports from which the enemy could reprovision himself. The goods were either confiscated alone or—in case they belonged to the owner of the ship—along with the ship itself.

<sup>1</sup>Krauel, *op. cit.*, pp. 13–15.

<sup>2</sup>Albrecht, p. 32.

<sup>3</sup>Kleen, *op. cit.*, vol. 1, p. 25, says: "The principles not only of the armed neutrality, but of almost all law of neutrality hitherto known and accepted, were renounced and trampled under foot." Cf. the thoroughgoing presentation of this matter in de Boeck, pp. 70 *et seq.*



However, in case the goods originated from the country of the ship, then compulsory sale of the contraband wares would be satisfactory.<sup>1</sup> France replied to the extremely harsh edict that henceforth, all ships on which English cargoes were found would be confiscated.<sup>2</sup> This condition of things appeared untenable to the neutral nations only when England proceeded to deny the right of convoy, and when she threatened to capture the war-ships that would oppose the search of vessels which they accompanied. When Denmark contested this right with regard to England, there arose a conflict between the two States in which Russia took a hand. The Russian Emperor had suddenly changed his tactics toward France and was roused by the manner in which neutral commerce was made to suffer by England. He laid an embargo upon English goods and ships and on December 14/16, 1800, he concluded a convention<sup>3</sup> with Denmark, Sweden and Prussia, whereby the principles of the first armed neutrality of 1780-1783 were renewed. In this so-called second armed neutrality, the right of convoy was expressly recognized and imposed upon the blockading Powers the obligation to inform neutral ships of the state of blockade. England, in January, 1801, replied thereto by capturing Russian, Danish and Swedish ships. When Denmark attempted to do the same with regard to English vessels, she was compelled to renounce the principles of the armed neutrality as the result of the battle in the roadway of Copenhagen. At the same time a new Emperor had ascended the throne in Russia. The new Emperor released the English ships and with England concluded a treaty of June 5/17, 1801,<sup>4</sup> by which the right to capture enemy goods on neutral ships was expressly agreed to. With regard to the effectivity of a blockade, it was agreed that it would be sufficient if the ships were stationed in the port or were close enough to each other so as to present real danger in entering it. In the absence of suspicion and intactness of the papers, a search should not be undertaken. In case a war-ship accompanied the vessels, search should not be permitted to corsairs, but only to national war-ships. This treaty subsequently acceded to (under compulsion) by Denmark and Sweden, indicated a complete surrender of the principles of the first armed neutrality.<sup>5</sup> On the other hand,

<sup>1</sup>Bergbohm, p. 254; Kleen, *op. cit.*, vol. 1, p. 26.

<sup>2</sup>De Boeck, p. 73.

<sup>3</sup>*Post*, pp. 531-549.

<sup>4</sup>*Post*, p. 595.

<sup>5</sup>Kleen, *op. cit.*, vol. 1, p. 30.

the treaty contained certain rules favorable to the neutrals: absolute inhibition of commerce with the enemy is set aside, contraband is precisely defined and in order that a blockade may be lawful, the stationing of a certain number of ships is made necessary. Looked at from this point of view, it may be said that the convention has marked a step in advance, since England for the first time made considerable concessions to several neutral States.<sup>1</sup> These concessions were, however, unimportant in practice because the treaties of 1801 were subsequently treated as dead letters. On the whole it may be said that the liberal principles would have found a readier acceptance, if the great Powers, especially Russia, had been less hesitating and followed the fine example of Denmark. The interests of the States were, however, so varying that it would have been difficult to agree upon given principles with regard to the most important problems. No armed neutrality has been attempted in subsequent times, although advocated by theorists like Remy.<sup>2</sup> It would be of great importance if England could be made to realize that it is to her own interests to come to an understanding with the other States.<sup>3</sup>

**WESTLAKE:** *International Law, Part II, War.* Second edition, Cambridge, 1913.

John Westlake. British publicist; born in 1828; died in 1913. He was elected a fellow of Trinity College in 1851, was called to the bar in 1854, and later became queen's counsel and a bencher of Lincoln's Inn. He was a member of the permanent court of arbitration at The Hague, Whewell professor of international law at Cambridge, and one of the founders of the Institute of International Law.

As an authority on international law Westlake enjoyed world-wide recognition, and his counsel was frequently sought by the British Government and by foreign Governments. He was one of the founders of the first periodical devoted to international law, *Revue de droit international et de législation comparée*, and continued to be a coeditor and contributor up to the time of his death. His publications include *A Treatise on Private International Law*, 1858, which has run through five editions and is recognized as a standard work, *International Law, Part I, Peace*, and *Part II, War*, in two volumes, 1904 and

<sup>1</sup>*Ibid.*, p. 31.

<sup>2</sup>See his *Théorie de la continuité de voyage*, 1902, p. 134.

<sup>3</sup>See *Hold v. Ferneck, Kriegskonterbande*, 1907, p. 2.

1907, second edition, 1910 and 1913, and *Chapters on the Principles of International Law*, 1894.

*Page 263.*—The compromise between belligerents and neutrals is, however, subject to the question whether there is anything peculiar in the character of the investment which neutrals have accepted as equivalent to siege, and on this we meet with a long and great controversy which still exists if the Declaration of London shall not be found to have settled it. One point has always been certain, namely, that, whether the blockade be a commercial or a military one, there must be a real danger to the blockade-runner in crossing the line of the investment, independent of any danger which he may run of being caught earlier with the intention of crossing it, or later after having crossed it. A line which it is not in itself highly dangerous to try to pass can not be that of an investment, nor can it affect with technical guilt either the intention to pass it formed at a distance, or the fact of its having been passed. This is expressed as follows by the Declaration of Paris:

4. Blockades, in order to be binding, must be real,<sup>1</sup> that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

If "really to prevent access" were taken literally, the successful crossing the line by one blockade-runner would prove the blockade to be void, which has never been contended. The meaning therefore must be, "to make the attempt at access highly dangerous." But, this being so, a question remains as to the method by which the danger may be created. The continental Powers, including Holland herself after her relative decline in naval power, have usually maintained that a blockade is only valid in law if the danger of ingress or egress arises from the cannon either of ships, stationary or sufficiently near one another, or of works on land. This is laid down, with more or less variety of expression, in the treaty of 1742 between France and Denmark, in that of 1753 between Holland and the Two Sicilies, in the declarations and treaties of armed neutrality in 1780, in the various

<sup>1</sup>*Effectifs* in the original, which means "real," not "producing an effect," as effective, which is the official translation, usually means in English. So also whenever an English writer mentions an effective blockade, he must be understood to mean a real one, that is a real investment, and not to be adding any further condition to its reality.

adhesions of other continental States to that armed neutrality or its rules, and in the declarations and treaties of armed neutrality in 1800.<sup>1</sup> When Russia, by a change of policy consequent on the battle of Copenhagen and the death of the Emperor Paul, abandoned the armed neutrality of 1800, her treaty of 1801 with England required for a blockade the presence only of ships stationary *or*, instead of *and*, sufficiently near to create an evident danger of entering. Yet in 1823 she assured the United States that she no longer held herself bound by that engagement.<sup>2</sup>

**WHARTON:** *A Digest of the International Law of the United States*. Second edition. Washington, 1887.

Francis Wharton. American publicist; born in 1820; died in 1889. He graduated from Yale in 1839, was admitted to the bar in 1843, and after fourteen successful years abandoned the practice of law to become a teacher, chiefly on theological topics. In 1862 he fulfilled a long-cherished desire to enter the Ministry of the Episcopal Church and was rector of St. Paul's Church, Brookline, Massachusetts, from 1863-69. Subsequently he became a teacher of ecclesiastical polity and canon law, lecturer on the conflict of laws, and on criminal law, and finally professor of criminal law at George Washington University. From 1885 to 1889 he was solicitor for the Department of State.

Wharton is one of the foremost American authorities on international law. His first important publication in this field is *A Treatise on the Conflict of Laws*, 1872, third edition, 1905. Later works dealing with this subject are his *Com-*

<sup>1</sup>In several of these pieces the place to be blockaded is described as attacked, but considering the practice of the eighteenth century, it must be admitted that this arose only from habit, or at least was done without an intention to require a real attack. An exception to that interpretation is, however, furnished by the treaty of 1787 between France and Russia, in which the rule of the armed neutrality of 1780 is reproduced with a variation requiring an attack by a number of ships proportioned to the strength of the place, and Napoleon or his advisers, may have had that treaty in their mind when drafting the Berlin decree. But that will not excuse the transparently false assertion about "the usage of all civilized nations." See above, p. 262. Again, many of the treaties, ending with that between Russia and Denmark in 1818, require the line of investment to be formed by a certain number of ships, usually two. That of 1753, mentioned in the text, requires six ships, which may lie a little outside the range of the shore batteries, but which must expose blockade-runners to danger from their cannon.

<sup>2</sup>Lawrence's *Wheaton*, edition of 1863, editor's note 235.

*mentaries on Law*, 1884, *Digest of the International Law of the United States*, 1886, 3 volumes, and *The Revolutionary Diplomatic Correspondence of the United States*, 1889, 6 volumes.

*Volume 3, page 262.*—Previous to the war which grew out of the American Revolution, the respective rights of neutrals and belligerents had been settled and clearly defined by the conventional law of Europe, to which all the maritime Powers had given their sanction in the treaties concluded among themselves. The few practical infractions, in time of war, of the principles thus recognized by them, have been disavowed, upon the return of peace, by new stipulations again acknowledging the existence of the rights of neutrals as set down in the maritime code.

In addition to the recognition of these rights by the European Powers, one of the first acts of the United States, as a nation, was their unequivocal sanction of the principles upon which they are founded, as declared in their treaty of commerce of 1778 with the King of France. These principles were that free ships gave freedom to the merchandise, except contraband goods, which were clearly defined, and that neutrals might freely sail to and between enemies' ports, except such as were blockaded in the manner therein set forth. These principles having thus been established by universal consent, became the rule by which it was expected that the belligerents would be governed in the war which broke out about that time between France and Spain, on the one hand, and Great Britain, on the other. The latter Power, however, having soon betrayed a disposition to deviate from them in some of the most material points, the Governments which had preserved a neutral course in the contest became alarmed at the danger with which their maritime rights were threatened by the encroachments and naval supremacy of England, and the Empress of Russia, at their head, undertook to unite them in the defense of those rights. On the 28th February, 1780, she issued her celebrated declaration, containing the principles according to which the commanders of her naval armaments would be instructed to protect the neutral rights of her subjects. Those principles were as follows:

1st. Neutral vessels may freely sail from port to port, and on the coasts of the nations parties to the war.

2d. The goods belonging to the subjects of the said nations are, with the exception of contraband articles, free on board neutral vessels.

3d. With respect to the definition of contraband articles, the Empress adheres to the provisions of the 10th and 11th articles of her treaty of commerce with Great Britain, and extends the obligations therein contained to all the nations at war.

4th. To determine what constitutes a blockaded port, this denomination is confined to those the entrance into which is manifestly rendered dangerous in consequence of the dispositions made by the attacking Power with ships stationed and sufficiently near.

5th. These principles are to serve as a rule in proceedings and judgments with respect to the legality of prizes.

This declaration was communicated to the belligerent Governments with a request that the principles it contained should be observed by them in the prosecution of the war. From France and Spain it received the most cordial and unequivocal approbation, as being founded upon the maxims of public law which had been their rule of conduct. Great Britain, without directly approving or condemning those maxims, promised that the rights of Russia would be respected agreeably to existing treaties. The declaration was likewise communicated to the other European Powers, and the accession by treaties or solemn declarations of Denmark, Sweden, Russia, Holland, Austria, Portugal, and the Two Sicilies to the principles asserted by the Empress of Russia, formed the league, which, under the name of "armed neutrality," undertook to preserve inviolate the maritime rights of neutrals.

Whatever may have been the conduct of the belligerents in that war with respect to the rights of neutrals as declared by the armed neutrality, the principles asserted by the declaration of the Empress Catharine were again solemnly recognized by the treaty of peace concluded by Great Britain and France at Versailles on the 3d September, 1783. Among the several treaties thereby renewed and confirmed was that of Utrecht, in 1713, by which the same contracting parties had, nearly a century before, given the most solemn sanction to the principles of the armed neutrality, which were thus again proclaimed by the most deliberate acts both of belligerents and neutrals as forming the basis of the universal code of maritime legislation among the naval Powers of the world.

Such may be said to have been the established law of nations at the period of the peace of 1783, when the United States, recognized as independent by all the Powers of the earth, took their station amongst them. These principles, to which they had given their sanction in their

treaties with France in 1778, were again confirmed in those of 1782 with Sweden, and 1785 with Prussia, and continued, uncontroverted by other nations, until the wars of the French Revolution broke out and became almost general in Europe in 1793. The maxims then advanced by Great Britain in her instructions to her naval commanders and in her orders in council regulating their conduct and that of her privateers with regard to neutrals, being in direct contravention of the principles set forth in the declaration of the armed neutrality and in her own treaty stipulations, compelled the European Powers which had remained neutral in the contest to unite again for the protection of their rights. It was with this view that the Emperor Paul, of Russia, appealed to these Powers, and that, at his instance, making common cause in behalf of the general interests of nations, Russia, Sweden, Denmark, and Prussia united in a new league of armed neutrality, bound themselves by new treaties, reasserted the principles laid down in the declaration of 1780, and added thereto some new clauses extending still further the privileges of neutral commerce.

Mr. Van Buren, Sec. of State, to Mr. Randolph, June 18, 1830.  
Mss. Inst., Ministers.

*Page 411.*—By the “armed neutrality” entered into during the American Revolutionary War by Russia, Denmark, and Sweden in 1780, “being the three northern Powers from whose dominions chiefly the other maritime nations of Europe received supplies of timber and other naval stores,” the effort was made “to strike these from the list of contraband, or by some means to exempt them from capture.” It was understood, however, at the time, that this was an exception from the law of nations. By this law “timber and other articles for the equipment of ships are contraband of war.” Hence the recital of this principle in Jay’s treaty ought to give no just cause of offense to France.

Mr. Pickering, Sec. of State, to Mr. Pinckney, Jan. 16, 1797.  
Mss. Inst., Ministers.

**WHEATON:** *History of the Law of Nations in Europe and America from the Earliest Times to the Treaty of Washington, 1842.* New York, 1845.

Henry Wheaton. American publicist; born in 1785; died in 1848. Mr. Wheaton practiced law in the city of New York, and was reporter, from 1816 to 1827, of the decisions of the Supreme Court of the United States, holding an enviable reputation throughout the country in respect to learning on foreign and international questions. Following this he spent twenty years in the diplomatic service of the United States as chargé d'affaires to Denmark, 1827 to 1835, and as minister to Prussia, 1837 to 1846, during which time he was engaged in negotiations of great importance to his own country and Europe.

As a commentator on the science of international law Mr. Wheaton combined advantages which were not previously united in any of his countrymen. One of his earliest works is *Law of Maritime Captures*, published in 1815. In 1836 he published his greatest work, *The Elements of International Law*, in two editions, one at Philadelphia and the other at London. This treatise, almost rivaling that of Vattel in popularity, has been translated into several languages and, enriched with notes by Richard H. Dana, is a standard work.

*Page 295.*—In the meantime Spain had been drawn into the war as an ally of France under the family compact of 1761, and Great Britain had demanded in vain from Holland that assistance which the republic was bound to render by the subsisting treaties of alliance and guarantee between the two countries. Indeed appearances indicated that Great Britain was soon to encounter an enemy in her ancient ally. Her naval, commercial, and colonial superiority were thus threatened by a formidable confederacy of the maritime Powers of Europe combined with the youthful energies of her own revolted colonies. In this extremity, the British Cabinet turned its attention to Russia, as a Power whose friendship and aid might be secured by the application of suitable means. Sir James Harris (afterwards Lord Malmesbury) was instructed to sound the disposition of the Empress Catharine, and for this purpose addressed himself to Panin, Chancellor of the Empire, and Potemkin, the reigning favorite of that princess. The former was unfavorable to the views of the British Cabinet; but the latter opened to their Ambassador the means of secret conference with the Empress, who consented to offer her armed mediation in the war between Great Britain on the one side, and France, Spain, and the United States on the other, as an equivalent for Russia's being allowed to prosecute her designs on the Turkish Empire. But the inclinations of the Empress were still resisted by Panin, who



endeavored to convince her that the true interests of the Russian State would not be promoted by such an alliance; and an official answer was accordingly returned declining the British overtures. Harris was disconcerted by this unexpected result, but received assurances from Potemkin, in the name of the Empress, of unchanged good-will, and an expression of the hope that circumstances would soon enable her to conform her conduct to her wishes.

An incident now occurred which seemed to favor the designs of the British negotiator. Two Russian vessels laden with corn, and bound to the Mediterranean, were seized by Spanish cruisers upon the ground that they were intended to supply the fortress of Gibraltar. The Empress instantly demanded satisfaction from the Spanish Court, and was persuaded by Potemkin to order, without consulting Panin, the equipment of a fleet at Kronstadt, which was destined to cooperate with Great Britain against Spain and her allies, in case redress should be refused. The fitting out of the fleet could not long be concealed from Panin, nor did he doubt its destination. But he determined to carry into effect his own views by appearing to forward those of his rival. Far from appearing to oppose the designs of the Empress, he declared that he himself participated in her indignation at the conduct of Spain, and entirely approved of her determination to require satisfaction for the injury done to the neutral navigation of her subjects engaged in a lawful commerce. He would even go further; he would exhort his sovereign to seize this opportunity of solemnly announcing to Europe that she would not suffer the wars waged by other Powers to affect injuriously the accustomed trade of Russia. He represented that such a course would secure the friendship and cooperation of all the neutral Powers, and would compel Spain to grant complete satisfaction for the injury she had committed. The true principles of neutrality, sanctioned by the natural law of nations, had been hitherto too little respected in practice. They had hitherto wanted the support of a sovereign uniting sufficient power, wisdom, and benevolence to cause them to be respected. These requisites were now united in Catharine, and she had an opportunity of acquiring new titles to glory, of becoming a lawgiver to the high seas, of restraining the excesses of maritime warfare, and affording to the peaceful commerce of neutrals such a security as it never had possessed.

The Empress was completely carried away by these representations so flattering to her pride and ambition. She ordered Panin to prepare

a statement of the principles he had developed, to be communicated to the belligerent Powers, as the rules to be observed for the security of Russian navigation and commerce, and to neutral States, as the basis of a league to be formed between them for the protection of neutral rights.<sup>1</sup>

In the declaration of the Empress of Russia, which was accordingly drawn up, under date of the 26th [*sic*] February, 1780, and communicated to the Courts of London, Versailles, and Madrid, these rules are laid down as follows:

1. That all neutral vessels may freely navigate from port to port and on the coasts of nations at war. ”

2. That the goods belonging to the subjects of the Powers at war shall be free in neutral vessels, except contraband articles.

3. That the Empress, as to the specification of the above-mentioned goods, holds to what is mentioned in the 10th and 11th articles of her treaty of commerce with Great Britain, extending these obligations to all the Powers at war.<sup>2</sup>

4. That to determine what is meant by a blockaded port, this denomination is only to be given to that where there is, by the arrangements of the Power which attacks it with vessels, stationed sufficiently near, an evident danger in attempting to enter it.<sup>3</sup>

Such was the origin of the first armed neutrality of 1780. It sprung from no enlarged and beneficent views of improvement in the mari-

<sup>1</sup>Von Dohm, *Denkwürdigkeiten meiner Zeit*, vol. 2, pp. 100-150; *Mémoire sur la Neutralité armée* par M. le Comte de Goertz, p. 104.

This account given by the Count de Goertz of the history of the armed neutrality is confirmed by what the Empress Maria Theresa said to Baron de Breteuil, Minister of France. “Il n’y a pas,” lui dit-elle à l’occasion de la neutralité armée; “il n’y a pas jusqu’à ses vues les plus mal combinées, qui ne tournent à son profit et à sa gloire; car vous savez sans doute que la déclaration, qu’elle vient de faire pour sa neutralité maritime, avait d’abord été arrêtée dans des termes et dans des vues absolument favorables à l’Angleterre. Cet ouvrage avait été fait par la seule influence de M. le Prince Potemkin, et à l’insu de M. le Comte de Panin; et cette déclaration, inspirée par l’Angleterre, était au moment de paraître, lorsque M. de Panin, qui en a été instruit, a trouvé moyen de la faire entièrement changer et de la tourner absolument en votre faveur.” Flassan, *Histoire de la diplomatie française*, vol. 7, p. 272 note.

<sup>2</sup>The treaty of amity and commerce of 1766 between Great Britain and Russia, Article 10, restricts contraband to “munitions of war”; and the 11th article defines these to consist of “canons, mortiers, armes à feu, pistolets, grenades, boulets, balles, fusils, pierres-à-feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, poches à cartouche, selles et brides, au delà de la quantité qui peut être nécessaire pour l’usage du vaisseau,” etc. *Post*, pp. 342, 343.

<sup>3</sup>*Post*, p. 273.

time law of nations hitherto sanctioned by general practice. It was the accidental result of a mere court intrigue, and of the rivalry between two candidates for the favor of a dissolute, ambitious, and vain-glorious woman. Catharine herself had a very imperfect idea of the immense importance of the measure she had adopted and of the effects it might produce. So ignorant was she of commerce, that she flattered herself with having at once vindicated her own honor and shown her strong regard for Great Britain. Panin took care not to undeceive her and, fearing that his intrigue might fail, begged she would not communicate with any one until the couriers were sent off with the declaration. But she could not refrain from saying confidentially to the British Ambassador that there would soon be delivered in her name to all the belligerent Powers a manifesto which would be completely satisfactory to the British Government; and condescended even to give him leave to communicate thus much to his Court. The communication which he accordingly made raised its expectations to the highest pitch, and the disappointment was proportionably greater when it learnt the true nature of the measures adopted by the Russian Cabinet.

The British Government dissembled its resentment, and replied to the Russian declaration with cold dignity, that His Majesty had hitherto acted towards neutral Powers "conformably to the clearest principles generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeably to the tenor of his different engagements with other Powers, where those engagements have altered this primitive law by mutual stipulations proportioned to the will and convenience of the contracting Parties," and that "strongly attached to Her Majesty the Empress of all the Russias by the ties of reciprocal friendship and common interest, the King, from the commencement of those troubles, gave the most precise orders respecting the flag of Her Imperial Majesty and the commerce of her subjects, agreeably to the law of nations, and the tenor of the engagements stipulated by his treaty of commerce with her, and to which he shall adhere with the most scrupulous exactness."<sup>1</sup>

The Court of Spain answered the Russian declaration by professing its determination to respect the neutral flag of all the Powers that had consented, or should consent to defend it, until His Catholic

<sup>1</sup>Answer of Great Britain, April 23d, 1780, to the declaration of the Empress of Russia, *post*, p. 282.

Majesty ascertained what part Great Britain should take, and whether its navy and privateers would keep within due bounds. And to show to all the neutral Powers how much Spain was desirous of observing, in time of war, the same rules of which she had claimed the observance whilst neutral, His Majesty conformed to those laid down by Russia, "with the understanding however that with regard to the blockade of Gibraltar, *the danger of entering* subsists as determined by the 4th article of the said declaration."<sup>1</sup>

The Court of France answered, that the principles laid down by Russia were no other than the rules already prescribed to the French navy, the execution of which was maintained with an exactness known and applauded by all Europe. "The freedom of neutral vessels, restrained in a few cases only, is a direct consequence of natural law, the security of nations, and the consolation even of those who are afflicted by the scourge of war. The King has therefore been desirous to procure, not only to the subjects of Her Majesty the Empress of Russia, but to all other States which continue neutral, the freedom of navigation on the same conditions with those announced in the declaration, to which His Majesty this day replies. The King believed that he had already advanced the general good, and prepared a glorious epoch of his reign, in establishing by his example those rights which every belligerent ought and must recognize as belonging to neutral vessels. This hope has not been vain, since the Empress, whilst engaging to observe the most exact neutrality, has declared in favor of that system which the King sustains at the price of the blood of his people, whilst she claims the same laws which His Majesty would make the basis of the universal maritime code."<sup>2</sup>

Denmark and Sweden concurred in approving the principles of the Russian declaration, and notified their concurrence to the belligerent Powers.

Great Britain answered to the Danish notification, that during the whole course of the present war with France and Spain, she had constantly respected the rights of all friendly and neutral Powers, according to subsisting treaties, and according to the clearest and most generally recognized principles of the law of nations common to all nations who are bound by no special conventions. Such conventions

<sup>1</sup>Answer from the King of Spain signed by Florida Blanca, April 18, 1780, *post*, p. 279.

<sup>2</sup>Answer of France, April 25, 1780, *post*, p. 284.

existed between Great Britain and Denmark, and the Danish flag and commerce would continue to be respected according to their stipulations, which defined the mutual rights and duties of the two nations and which could not be changed without their mutual consent. Until thus changed, they constituted an inviolable law for both parties, which had been observed and would continue to be observed by the British Government with that spirit of equity which regulated all its conduct, and in the just expectation of reciprocal fidelity on the part of Denmark to its engagements.<sup>1</sup>

To the notification of Sweden the British Cabinet answered in a similar manner, with a special reference to the stipulations of the existing treaties between the two countries, which were clear and formal, and could not be changed without the mutual consent of the contracting Parties. As such, they would be observed by Great Britain, as a sacred and inviolable law.<sup>2</sup>

Denmark and Russia concluded at Copenhagen on the 9th July, 1780, the convention of armed neutrality for the maintenance of those principles by the equipment of a joint fleet, and for their mutual defense against any Power who should attack either of the contracting Parties on account of their reciprocal engagements. By this convention, to which Sweden acceded on the 9th September, 1780, the Baltic sea was declared to be *mare clausum* against the ships of war of the belligerent Powers; and the contracting Parties referred to their respective treaties with the belligerent Powers for the definition of contraband.<sup>3</sup>

In the meantime a diplomatic struggle was going on in the United Provinces between the agents of France and Great Britain, the former seeking to confirm the Republic in her resolution of remaining neutral, and the latter insisting on her furnishing the succors stipulated by the existing treaties of alliance and guarantee. In order to determine the conduct of the Dutch, the French Government issued, on the 14th of January, 1779, an ordinance suspending the operation of the first article, that of the 26th July, 1778, in respect to their navigation, excepting that of Amsterdam. The operation of this ordinance was again suspended as respected the entire province of *Holland* on the 2d of July, 1779, which still continued to be privileged under the for-

<sup>1</sup>Answer of Great Britain to the Danish declaration of July 8, 1780, *post*, p. 308.

<sup>2</sup>*Post*, p. 317.

<sup>3</sup>*Post*, pp. 299, 322.

mer ordinance of 1778. France thus sought to divide the councils of the Republic, whilst the British Court notified the States General that, if they did not, within the term of three weeks, furnish the stipulated succors, Great Britain would no longer consider their flag as privileged by treaty, but would conduct [*sic*], in respect to it, according to the strict principles of the preexisting law of nations. This menace was executed by the proclamation of the 17th April, 1780, which authorized the seizure of Dutch vessels, bound from one enemy's port to another, or laden with enemies' property. Whilst thus agitated by alternate hopes and fears, the States General were invited by Russia to accede to the convention of armed neutrality which had been formed by the Baltic Powers. After long delays and hesitation, the resolution for this purpose was, at length, passed on the 20th November, 1780; but it was even then not unanimous, the three provinces of Zealand, Guelders, and Utrecht, having refused their assent. This was followed on the 20th December, 1780, by a declaration of war against the United Provinces on the part of Great Britain, grounded upon the alleged fact of their having concluded a secret treaty acknowledging the independence of the United States of America. The United Provinces demanded from the northern Powers the succors stipulated by the convention of armed neutrality; but this demand was rejected, upon the ground that the rupture between Great Britain and Holland, had actually taken place before the accession of the latter to the armed neutrality, and that the causes of war, stated in the British declaration, were entirely foreign to the objects of the neutral alliance.<sup>1</sup>

The United States of America acceded to the principles of the armed neutrality by the ordinance of Congress of the 7th April, 1781.

Prussia acceded to the armed neutrality on the 8th May, 1781.

Austria acceded to the principles of the armed neutrality, but not to the conventions by which it was formed, on the 9th October, 1781.

Portugal acceded to the conventions on the 13th July, 1782.

The King of the Two Sicilies acceded to the conventions on the 10th February, 1783.<sup>2</sup>

The armed neutrality of the northern Powers continued to hang as a dark cloud constantly menacing the safety of the British Empire

<sup>1</sup>Schoell, *Histoire abrégée des traités de paix*, vol. 4, p. 53; Flassan, *Histoire de la diplomatie française*, vol. 7, pp. 282-297; *post*, p. 277.

<sup>2</sup>February 21, 1783, new style. *Post*, p. 433.

until the peace of 1783. Being engaged in war with France, Spain, Holland, and the United States of America, the addition of the hostility of those Powers might have turned the already doubtful balance against her naval superiority. It was with this view, and also to detach Holland from the confederacy, that Great Britain offered, in 1782, to make a separate peace with the Republic, under the mediation of Russia, on the basis of the treaty of 1674, by which, as Mr. Fox, then Secretary of State for Foreign Affairs, stated in his communication to the Russian Minister in London, "the principles of the armed neutrality are established in their widest extent to all the contracting Parties. His Majesty, therefore, does not make any difficulty to say, that he will accept, as the basis of a separate peace between him and the States General, a free navigation, according to the principles demanded by Her Imperial Majesty in her declaration of the 26th [*sic*] February, 1780."<sup>1</sup>

This negotiation proved abortive, and Great Britain continued to act towards the Powers which remained neutral during the American war, according to the preexisting law of nations, as understood and practiced by her. She, however, asserted her maritime pretensions with much forbearance and caution, and suffered the rule she had established in the war of 1755, relating to the enemy's colonial trade, to slumber in oblivion.<sup>2</sup>

*Page 397.*—Whilst this negotiation<sup>3</sup> was going on, the Emperor of Russia, who had separated himself, first from the alliance of Austria, and subsequently from that of Great Britain, proposed to the Courts of Denmark, Prussia, and Sweden, to conclude a convention for the revival of the principles of the armed neutrality of 1780. This proposition was grounded principally upon the necessity of concerting on the part of the northern Powers measures of defense against aggressions similar to that which it was alleged had been committed on the Danish frigate *Freya*; and the Emperor Paul no sooner heard of the arrival of a British fleet in the Sound, than he ordered a sequestration to be placed upon all British property in the Russian ports. The signature of the convention of the 29th August, between Denmark and Great

<sup>1</sup>*Annual Register* for 1782, p. 299.

<sup>2</sup>Here follows a history of the period extending to the year 1800.

<sup>3</sup>I. e., the negotiation between Great Britain and Denmark terminated by the convention of Copenhagen of August 29, 1800, by which it was agreed that the Danish Government should suspend the granting of convoy until the question of right should be settled by a definitive convention.

Britain, induced him to retract this measure. But the refusal of the British Government to deliver to him the possession of the island of Malta, which he claimed under an alleged agreement with that Government, induced him to lay an embargo on all British vessels. Three treaties were signed at St. Petersburg on the 16th December, between Russia and Sweden and between Russia and Prussia, and on the 18th between Russia and Prussia: and as each of these Powers acceded to the treaties of the others with Russia, they formed together a sort of quadruple alliance.

By the first article of these treaties, the contracting Parties agreed to prohibit to their subjects all trade in contraband of war with any of the belligerent Powers.

The second article confined the list of contraband to military stores, as stipulated in the armed neutrality of 1780 by reference to the treaty of 1766 between Great Britain and Russia. But it was provided that this stipulation should be without prejudice to the particular stipulations in anterior treaties with the belligerent Parties, by which objects of a similar kind are reserved, prohibited, or permitted.

The third article provided, that the list of contraband articles, being thus determined and excluded from neutral commerce, the contracting Parties had resolved that all other trade should remain perfectly free. It was further declared, by the same article, that in order to provide a sufficient security for the general principles of natural law, of which the freedom of commerce and navigation and the rights of neutral nations are a direct consequence, they had determined no longer to suffer them to depend upon arbitrary interpretation suggested by isolated and temporary interests. With this view they had agreed:

1. That every vessel may navigate freely, from port to port, and on the coasts of nations at war.

2. That the goods belonging to the subjects of the Powers at war shall be free in neutral vessels, except contraband articles.

3. That to determine what is meant by a blockaded port, this denomination is only to be given to that where there is, by the arrangement of the Power which attacks it with vessels, stationed sufficiently near so that there is an evident danger in attempting to enter it; and that any vessel, sailing towards a blockaded port, should not be considered as contravening the convention, unless, after having been notified by the commander of the blockading force of the existence of the block-



ade, she should still endeavor to enter the blockaded port by means of force or fraud.

4. That neutral vessels shall only be detained for just cause and evident facts, that they shall be adjudged without delay, that the procedure shall be always uniform, prompt, and legal; and that in every case, besides the damages awarded to the injured parties, complete satisfaction shall be given for the insult to the national flag.

5. That the declaration of the officers, commanding the public ships which shall accompany the convoy of one or more merchant vessels, that the ships of his convoy have no contraband articles on board shall be deemed sufficient to prevent any search on board the convoying vessels or those under convoy.

The remaining articles provided for a joint armament to protect the neutral commerce of the subjects of the contracting Parties, and for an eventual alliance, in case either of them should be attacked on account of these engagements.

The Danish Government, at first, hesitated to ratify the treaty which had been signed by their Ministers at St. Petersburg. It was already bound by the convention of Copenhagen to Great Britain not to grant convoys to its merchant vessels until the question should be finally determined between the two Powers. An unconditional accession to the treaties of armed neutrality would seem to be a violation of its previous engagements with Great Britain. In the meantime, the British Minister at Copenhagen, by his note dated the 27th December, had demanded a clear, frank, and satisfactory answer upon the nature, objects, and extent of the obligations Denmark might have contracted, or the negotiations she was still pursuing with the other northern Powers. Count Bernstorff, in his reply to this note, of the 31st December, denied that the engagements his Government was upon the point of contracting were hostile to Great Britain, or inconsistent with the previous convention of the 29th August. He asserted, that a conditional and temporary suspension of the exercise of a right could not be considered as an abandonment of the right which was incontestable, and for the maintenance of which the northern Powers were about to provide by a mutual concert, which far from compromising their neutrality, was intended to confirm it.

The British Government replied to this note by an order in council, dated the 14th of January, 1801, laying an embargo on all Russian, Swedish, and Danish vessels. Lord Grenville notified this order to the

Ministers of Denmark and Sweden, declaring that the new maritime code of 1780, now sought to be revived, was an innovation highly injurious to the dearest interests of Great Britain, and which Russia herself had renounced by the engagements contracted between her and Great Britain at the commencement of the then present war.

These measures decided Denmark to adhere unconditionally to the armed neutrality by a declaration published on the 27th February, 1801.

Great Britain continued to temporize, from motives of policy, with Prussia, the remaining party to the northern alliance. This did not however prevent the Prussian Cabinet from cooperating with Denmark in shutting the mouths of the Elbe and the Weser, against British commerce. The Danish troops occupied Hamburg and Lubeck, whilst Hanover and Bremen were seized by Prussia. In the meantime, the war commenced between the Baltic Powers and Great Britain by the battle of Copenhagen, April 2, 1801, the result of which produced an armistice with Denmark. The death of the Emperor Paul dissolved the confederacy which had been formed under his auspices. The armistice with Denmark was extended to Russia and Sweden and the Hanseatic towns were evacuated by the Danish and Prussian troops. The embargoes were raised on both sides, and a negotiation opened at St. Petersburg for regulating the points in controversy.

This negotiation resulted in the signature of a convention between Great Britain and Russia on the 5th/17th of June, 1801, the preamble of which stated that:

[Here follows the text of the treaty.]

The Court of Copenhagen acceded to this convention, on the 23d October, 1801, and that of Sweden, on the 18/30th March, 1802. The list of contraband inserted in the convention differed from that contained in the 11th article of the treaty of 1661 between Great Britain and Sweden, whilst the convention reserved the special stipulations of the contracting Parties with other Powers relating to contraband. In order to prevent a recurrence of the differences which had arisen relative to the 11th article of the treaty of 1661, a convention was signed at London on the 25th July, 1803, between Great Britain and Sweden, by which the list of contraband contained in the convention of 1801 was augmented with the addition of the articles of coined money, horses, and the necessary equipments of cavalry, ships of war, and all manufactured articles serving immediately for

their equipment, all which articles were subjected to confiscation. It was further stipulated, that all naval stores, the produce of either country, should be subject to the right of preemption by the belligerent, upon condition of paying an indemnity of ten per centum upon the invoice price, or current value, with demurrage and expenses. If bound to a neutral port, and detained upon suspicion of being bound to an enemy's port, the vessels were to receive an indemnity, unless the belligerent Government chose to exercise the right of preemption; in which case, the owners were to be entitled to receive the price which the goods would have sold for at their destined port, with demurrage and expenses.<sup>1</sup>

We have thought it necessary to dwell thus minutely upon the circumstances which attended the formation of the convention of 1801, because it may justly be considered, not merely as forming a new conventional law between the contracting Parties, but as containing a recognition of universal preexisting rights, which could not justly be withheld by them from other States. The avowed object of the treaty was to fix and declare the law of nations upon the several points which had been so much contested; the three northern Powers yielding the point of *free ships, free goods*, and that of search subject to a modification, by which the exercise of the right was confined to public ships of war; and Great Britain yielding to all of them those relating to the colonial and coasting trade, to blockades, and to the mode of search; and yielding to Russia, moreover, the limitation of contraband to military stores. With respect to the question of convoys, a question not comprehended in the armed neutrality of 1780, a modification, satisfactory to the northern Powers, was yielded by Great Britain.

That this is the true interpretation of the convention of 1801, was made evident in the course of the debate, which took place in the British House of Lords on the 12th of November, 1801, on the production of the papers relating to that convention.

On this occasion Lord Grenville, who, together with his friend Mr. Pitt, had retired from the Ministry, leaving their successors to make peace with France and the northern Powers, declared his full conviction that the convention essentially impaired the system of maritime law which had been upheld by the British Government. He stated that the inadmissible pretensions of the Baltic Powers had been coun-

<sup>1</sup>*Post*, p. 620.

tenanced by the weak and temporizing policy, which Great Britain had pursued towards them, in the last years of the war of the American revolution. At the commencement of the war of the French revolution, she had indeed obtained, by negotiation with all the principal Governments of Europe, a renunciation of claims, which had never been advanced but with purposes hostile to her. The principles in question were, indeed, within a few years after the armed neutrality of 1780, renounced by almost every State which had been a party to that league;<sup>1</sup> and in some of the official communications with the Baltic Powers, during the war with France, pretensions were advanced, both by the Empress Catharine and her successor, which went to the full extent of the ancient maritime law of Europe.<sup>2</sup> The effects of this change of sentiment ensured to Great Britain, for several years, the undisturbed exercise of her maritime rights in those quarters where they were the most important, both to her own interests, and to those of the common cause in which she was engaged. But when caprice and groundless disgust were suffered to interrupt this well-considered system of policy at Petersburg, the former pretensions of the neutral Powers were soon renewed with increased hostility; and it last became manifest, upon the signature of the convention of armed neutrality of 1800, that unless Great Britain could then resolve to meet the necessity of the case, by bringing these questions to a distinct and final settlement, they would always be found to impede her operations, and embarrass her exertions in every future period of difficulty or danger.

The principal objection stated by Lord Grenville to the convention of 1801 was, that in the form and wording of its different articles, the two hostile conventions of armed neutrality had been followed, with a scrupulous and servile exactness, wherever they could be made to apply. Great Britain had, therefore, negotiated and concluded that treaty on the basis of the very same inadmissible conventions, which she actually went to war for the purpose of annulling. And she then

<sup>1</sup>By Russia, in her war with Turkey in 1787; by Sweden, in her war with Russia in 1789; by Russia, Prussia, Austria, Spain, Portugal and America, in their treaties with Great Britain during the first war of the French revolution; by Denmark and Sweden, in their instructions issued in 1793, when neutral; and in their treaty with each other in 1794; and by Prussia again in her treaty with America of 1799. (Note by Lord Grenville.)

<sup>2</sup>See Russian declaration to Sweden, July 30, 1793. Instructions to Admiral Tchatchagoff, July 24, 1793. See also Russian treaty of commerce 1797 with Great Britain, Article 10, *post*, p. 445.

stood in the face of Europe, no longer as resisting, but as acceding to the treaties of armed neutrality, with modifications indeed, and changes in some important points, but sanctioning, by that concession, the general weight and authority of transactions which she had before considered as gross violations of public law, as manifest indications of hostile purpose, and as sufficient grounds to justify, on her part, the extremities of war itself. Whatever principles of maritime law might thereafter be contested, they must be discussed with some regard to the treaties of armed neutrality. Whatever words of doubtful interpretation were transferred from those treaties into the convention (and many such were transferred) must, according to one of the best rules of legitimate construction, be explained by a reference to the original instrument, where they were first introduced into the code of public law.

It was, therefore, under this impression that they must proceed to examine the convention of 1801, and to compare it with those claims, for which Great Britain determined, at the commencement of the year, that it was necessary, even under all the difficulties of that moment, to incur the additional dangers of a northern war. Those claims were included in five separate propositions or principles of maritime law, every one of which the neutral league of 1800, had bound the contracting Parties in that engagement to resist by force: and every one of which their Lordships had agreed with the Ministry of that day, in considering as essentially necessary to be maintained for the preservation of the maritime strength of Great Britain, and, consequently for the means even of her domestic security.

The propositions were as follows:

1. That it is not lawful to neutral nations to carry on, in time of war, for the advantage, or on the behalf of one of the belligerent Powers, those branches of its commerce, from which they are excluded in time of peace.

2. That every belligerent Power may capture the property of its enemies, wherever it shall be met with on the high seas, and may, for that purpose, detain and bring into port neutral vessels laden wholly or in part with any such property.

3. That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent Powers, the law of nations (if not restrained by special treaty), includes all naval as well as all military stores; and generally all articles serving principally,

according to the circumstances of the war, to afford to one belligerent Power the instruments and means of annoyance to be used against the other.

4. That it is lawful to naval Powers, when engaged in war, to blockade the ports of their enemies by cruising squadrons, *bona fide* allotted to that service, and fairly competent to its execution. That such blockade is valid and legitimate, although there be no design to attack or to reduce by force the port, fort, or arsenal to which it is applied. And that the fact of the blockade, coupled with due notice thereof to the neutral Powers, shall affect, not only vessels actually intercepted in the attempt to enter the blockaded port, but those ships also, which shall elsewhere be met with, and shall be found to have been destined to such port, under the circumstances of the fact and notice of its blockade.

5. That the right of visiting and examining neutral vessels is a necessary consequence of these principles; and that by the law of nations (when unrestrained by treaty) this right is not in any manner affected by the presence of a neutral ship of war, having under its convoy merchant ships, either of its own nation or of any other country.

The first of these principles established the rule under which the belligerent refuses to neutrals the liberty of carrying on, during war, those parts of his enemy's trade from which they are usually excluded in time of peace. This rule had, in the British practice, been principally applied to the coasting and colonial trade of France. From both these branches of her trade, France had, in every period of peace, excluded all vessels but her own, with occasional exceptions only, such as more strongly proved her general principle of exclusion. But in war she had always found it impossible to maintain these monopolies. Pressed, on the one hand, by the naval superiority of Great Britain, which had rendered the navigation of French ships unsafe, and unable, on the other hand, to forego the resources which depend entirely on these important branches of her commerce, France had frequently endeavored, under these special circumstances, to open both her colonial and her coasting trade to neutral vessels. The right to carry on unmolested both these branches of commerce was claimed by the northern Powers in the league of armed neutrality of 1780 and of 1800. The claim, which the confederates thus asserted, was, so far as related directly to the coasting trade, expressed in the 3d article

of the convention of 1800 as follows: "That neutral ships may navigate freely from port to port, and on the coasts of the belligerent Powers." The convention of 1801 had adopted very nearly the same expressions. By the first section, of what there, also, stood as the third article, neutral ships are permitted "to navigate freely to the ports and upon the coasts of the belligerent Powers." And in the next section of the same article, corresponding also (though with a variation respecting enemy's property) with a clause in the treaty of armed neutrality of 1800, it was expressly declared, that "the effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property." A free navigation to the ports, and upon the coasts, of any country, must imply the liberty of navigating freely, both to and from all those ports, and upon every part of those coasts. If any limitation of this liberty had been intended, it would have been stated in the exceptions, specified in the convention, to the otherwise unrestrained freedom of navigation to the enemy's ports, which neutrals were thenceforward to enjoy. Among the exceptions thus specified, not even the most distant reference is to be found to that principle respecting the coasting trade which Great Britain had asserted. The liberty of sailing freely to any hostile port was plainly conceded; but it was not even intimated, much less declared, that this permission was not to extend to ships laden with commodities purchased at any other port of the same country. Nor would it be easy to explain in any other sense than that of a deliberate and intentional concession of the coasting trade, the admission of those words which guarantee to neutrals the free navigation, not only to the ports, but "upon the coasts of the Powers at war." If a direct trade only from the neutral country to the belligerent ports had been intended, the first words of the section had amply secured it. If it was meant to permit a partial and successive discharge of the different articles of the cargo, at different ports, this also was secured by the general and unqualified permission to sail freely to those ports. The words "upon the coasts" were first introduced into the treaty of armed neutrality in 1780. They were there employed for the express purpose of asserting the right of neutrals to carry on the coasting trade of the belligerents. From that treaty they had since been carefully transcribed, first into the hostile convention of 1800, and now again into the conciliatory arrangement of 1801, to which they were thenceforth to look for the rule of maritime law.

But even supposing the sense of the convention of 1801 was ambiguous, as to the coasting trade, there could be no doubt that it had surrendered to neutrals the right to carry on the enemy's colonial trade. The only relaxation which had been allowed by Great Britain, during the war with France, of the principle asserted by her, was that contained in the order in council of January 8, 1794 the effect of which was to permit neutral vessels to carry to the ports of the United States the produce of the French colonies. In other respects, the previous order of the 6th November, 1793 still remained in full force, unless it were annulled by the convention of 1801. The second section of the third article of this treaty distinctly provided, that all "the effects embarked on board neutral ships shall be free, with the exception of contraband of war and enemy's property; and it is agreed not to comprise in the number of the latter, the merchandise of the produce, growth, or manufacture of countries at war, which should have been acquired by the subjects of the neutral Power, and should be transported for their account; which merchandise can not be excepted, in any case, from the freedom granted to the flag of the said Power." It was impossible to apply these words to any other case than that of the trade in the produce of the French colonies, become the property of neutrals, which was declared to be free in neutral vessels, whatever might be the destination, whether to a neutral country or even to France itself.<sup>1</sup>

As to the British claim, in respect to the liability to capture and confiscation of enemy's property, found on board of neutral vessels, Lord Grenville admitted that it was fully recognized by the second section of the third article of the convention, which implied a relinquishment of the opposite principle of *free ships, free goods* on the part of the northern Powers.

The stipulation in the third section of the same article, relating to contraband of war, must be considered in connection with the

<sup>1</sup>It should be observed that the right to carry on the colonial trade granted by this article was subsequently limited by the explanatory declaration, which had already been signed at Moscow at the time when Lord Grenville was speaking, though unknown to him, by which it was agreed that "the freedom of commerce and navigation, granted by the said article to the subjects of a neutral Power, does not authorize them to carry, in time of war, the produce or merchandise of the colonies of the belligerent Power, direct to the continental possessions, nor *vice versa*, from the mother country to the enemy's colonies; but that the said subjects are, however, to enjoy the same advantages and facilities in this commerce as are enjoyed by the most favored nation, and especially by the United States of America." *Post*, p. 606.



second *separate* article of the convention, by which the treaty of commerce of the 10/21 February, 1797, was "confirmed anew, and all its stipulations repeated to be maintained in their whole extent." The effect of this article was to reestablish the treaty of 1797, which had, by a temporary stipulation, admitted the subjects of the Russian Empire to carry, in their own ships, naval stores to the enemy's ports. The treaty itself would soon expire, but the privilege it granted to Russia of carrying naval stores would not expire with it. The article which contained that stipulation had been separated from all commercial stipulations, and transferred from the temporary treaty of 1797 into the convention of 1801, which was expressly declared to be perpetual.<sup>1</sup> The third and fourth sections of this article, which treat of contraband and of blockaded ports, did each of them expressly contain, not the concession of any special privilege to be thenceforth enjoyed by the contracting Parties only, but the recognition of an universal and preexisting right, which, as such, could not justly be refused to any other independent State. The third section, relating to contraband of war, was, in all its parts strictly declaratory. It was introduced by a separate preamble, announcing that its object was to prevent "all ambiguity or misunderstanding as to what ought to be considered as contraband of war." Conformably with this intention, the contracting Parties declared, in the body of the clause, what were the only commodities which they acknowledge as such. And this declaration was followed by a special reserve, that "it shall not prejudice their particular treaties with other Powers."

If the parties had intended to treat of this question only as it related to their own conduct towards each other, and to leave it, in that respect, on the same footing on which it stood before the formation of the hostile league of 1800, all mention of contraband in that part of the convention would evidently have been superfluous. Nothing more could, in that case, be necessary than to renew the former treaties which had specified the lists of contraband; and as that renewal was expressly stipulated in another article of the convention, the third section must be considered as introduced for some distinct purpose. It must therefore unquestionably be understood in that larger sense announced in its preamble, and expressed in the words of the declara-

<sup>1</sup>Article 8. The principles and measures adopted by the present act shall be alike applicable to all the maritime wars in which one of the two Powers may be engaged whilst the other remains neutral. These stipulations shall consequently be regarded as permanent, and shall serve for a constant rule to the contracting Powers in matters of commerce and navigation.

tion which it contained. It must be taken as laying down a general rule for all future discussions with any Power whatever, on the subject of military or naval stores, and as establishing a principle of law which was to decide universally on a just interpretation of the technical term of contraband of war. The reservation, made in the conclusion of the section, of special treaties with other Powers, was manifestly inconsistent with any more limited construction. It was unnecessary to declare that a stipulation, extending only to the Baltic Powers, should not prejudice the subsisting treaties of Great Britain with other nations. But the reserve was not only prudent, but necessary, when she undertook to lay down a universal principle, applicable to all her transactions with every independent State. In recognizing a claim of preexisting right, and in establishing a new interpretation of the law of nations, it was unquestionably of extreme importance expressly to reserve the more favorable practice which her subsisting treaties had established with some other Powers.

The interpretation given to the term contraband of war in the convention was drawn exclusively from the treaties of armed neutrality. In the league of 1780, the Empress of Russia had thought proper to declare that her engagements with Great Britain on the subject of contraband should thenceforth be considered as the invariable rule of natural and universal right. The convention of 1801 adopted the same rule, and adopted it on the same ground; enumerating all the commodities mentioned in the treaty of 1797 between Great Britain and Russia: declaring, that conformably to that treaty, the two sovereigns acknowledge those commodities alone as contraband of war. Great Britain must, in all future discussions with other neutral Powers, abide the consequences of that new rule of public law which she had herself thought proper to proclaim. She had publicly deserted her former claim, had confessed that naval stores ought not to be considered as contraband of war, and that she herself no longer acknowledged them as such. She had expressed this avowal in the very words originally intended for the purpose of making it universal; and had inserted it in her treaties with those very Powers who had confederated for no other object than to enforce her observance of it.

The stipulation on the subject of blockaded ports was also transcribed, with the variation of a single word, from the corresponding articles of the two conventions of armed neutrality. Those articles

had declared, in substance, that no port should be considered as blockaded unless where the Power attacking it should maintain a squadron constantly stationed before it, and sufficiently near to create an evident danger of entering. In the convention of 1801, instead of the words, "*and sufficiently near,*" the contracting Parties had substituted, "*or sufficiently near.*" And he had not the smallest doubt that by this minute change, trifling and unimportant as it was, they intended to establish, in their full extent, the principles which Great Britain had maintained on this great question of maritime blockade, and which the article, in its original state, as it stood in the two neutral conventions was intended completely to subvert. But what he complained of, was the glaring impolicy of resting so important a principle on the minute and scarcely perceptible variation of a single article. He stated, however, two other objections to the article:

1. That when it spoke of the Power which attacks the port, it seems, in some degree, to countenance the unfounded assertion that a blockade by sea, like that by land, required an actual design of reducing or conquering the particular place to which it was applied. Whereas Great Britain maintained, in her naval wars with France, as Holland formerly maintained in her contest with Spain, that the blockade of one or more of the enemy's ports, or even of a considerable extent of his coasts, may lawfully be adopted for the special purpose of intercepting his supplies, in order, by this pressure, to reduce him to just and reasonable conditions of peace.

2. The second objection arose from the very nature of all naval operations, depending so much on the variations of weather, by which a squadron blockading a hostile port, and fully equal to the execution of that service, might, nevertheless, occasionally be unable to remain either stationary before the port, or even sufficiently near it to create at all times an evident danger of entering. And if, as the words of the article imported, the blockade was understood to continue so long only as that danger actually existed, and was on the other hand to be considered as being raised as often as the danger ceased, even if for the shortest interval, the utmost confusion must inevitably arise in all cases, but particularly in those of neutral ships met with at a distance from the blockaded port, but destined to it. It might indeed be asserted, without the least exaggeration, that even giving the fullest weight to that minute verbal change, on which so much was made to

depend, a strict adherence to the letter of that stipulation must utterly destroy the whole British system of blockade by cruising squadrons.

Lord Grenville then proceeded to consider the stipulations of the convention as it respects the visiting and examining neutral vessels under convoy. The claim of the neutral league of 1800 confined this examination to a bare perusal of the papers of the neutral ships, which papers were, for that purpose, to be communicated to the belligerent by the neutral officer on board his own vessel. Exactly the same proceeding had been stipulated in the convention of 1801, and it was added, in both treaties, that if the papers so communicated should be found to be regular, no further search should take place. An exception, however, was subjoined in that of 1801, which constituted the only practical difference on the subject between the two conventions. It was not, as before, laid down absolutely, that no further search should, in any case, take place, but that none should take place "unless some valid motive of suspicion shall exist." Good faith forbade its being contended that the right, from which the belligerent had agreed to abstain, except when some valid ground of suspicion should exist, might still be indiscriminately exercised at his discretion. As the practice had before stood, the inquiry into the facts of the case preceded all conclusions to be drawn from them. The suspicion arose from the search, and the detention of the ship was its just and natural effect. As the law would stand under the convention, suspicion must precede inquiry, and very few cases were likely to occur, where any valid ground of suspicion respecting a neutral ship could *bona fide* exist before the search. It was then but too manifest that, while they had, in words, established the right of visiting ships under neutral convoy, they had, in fact, so limited and circumscribed the practice, as utterly to renounce every beneficial purpose to which it could, by any possibility, be applied.<sup>1</sup>

In order to complete our view of the controversy growing out of the armed neutrality, it is only necessary to add that both in the preliminary treaty of peace between France and Great Britain signed in 1801, and in the definitive treaty concluded at Amiens in the following year, a total silence was observed respecting the disputed points of maritime law. On the rupture which took place between Great

<sup>1</sup>Speech delivered by Lord Grenville in the House of Lords, Nov. 13, 1801, *Parliamentary History of England*, vol. 36, pp. 200-255. For the very lame and inconclusive replies made by other speakers, see *ibid.*, pp. 256-263.

Britain and Russia in consequence of the attack upon Copenhagen and capture of the Danish fleet, the Russian Government published on the 26th October, 1807, a declaration forever annulling the maritime convention of 1801, and proclaiming "anew the principles of the armed neutrality, that monument of the wisdom of the Empress Catharine," and engaging never to derogate from this system.

The British Government published, on the 18th December, an answer to this declaration proclaiming "anew the principles of maritime law, against which was directed the armed neutrality under the auspices of the Empress Catharine."

It was stated that these principles had been recognized by all the Powers of Europe who framed that league, and no one more strictly conformed to them than Russia herself under the reign of the Empress Catharine. It was the right, as well as the duty of His Majesty to maintain these principles, which he was determined to do against every confederacy with the assistance of divine Providence. The subsequent treaties of peace and of commerce between the two Powers are totally silent upon the disputed points.<sup>1</sup>

The treaties of peace signed at Paris in 1814-15, between France and the allied Powers, are equally silent upon the contested questions of maritime law.

**WOOLSEY:** *Introduction to the Study of International Law, designed as an aid in teaching and in historical studies* by Theodore Dwight Woolsey. Sixth edition revised and enlarged by Theodore Salisbury Woolsey. New York, 1897.

Theodore Dwight Woolsey. American publicist and educationalist; born in 1801; died in 1889; president of Yale College from 1846 to 1871; member of the Institute of International Law; author of works on Greek literature, law, re-

<sup>1</sup>Martens, *Manuel diplomatique sur les droits des neutres sur mer*, p. 69. The questions involved in the controversy, respecting the armed neutrality, became the subject of polemic discussion by various public jurists, both in belligerent and neutral countries. Among these works one of the most remarkable was the examination of the judgment of Sir W. Scott in the case of the Swedish convoy by Professor J. F. W. Schlegel published at Copenhagen in 1800. It was replied to by Dr. Croke in his remarks upon Mr. Schlegel's work upon the visitation of neutral vessels under convoy, London, 1801.

ligion, and social economy. He contributed largely to periodicals and wrote numerous articles on subjects bearing on international law, among others, *Recent Aspects of International Law*, 1856, and *Right of Search*, 1858, both of which appeared in the *New Englander*, a review founded by him. His most important contribution to the science of international law is his *Introduction to the study of international law, designed as an aid in teaching and in historical studies*, 1860, which has run through a number of editions.

*Page 270.*—The position of the neutral gives rise to rights, which may be defended against attempted aggressions of a belligerent by armed forces, and several neutrals may unite for this purpose. This is called an armed neutrality, of which the two leagues of the Baltic Powers in 1780 and 1800 furnish the most noted instances. But it may be doubted whether the term neutrality can be applied to these leagues, which not only armed themselves for self-defense, but laid down principles of public law against the known maxims of one of the belligerents, which they were ready to make good by force. (Secs. 189, 209.)

*Page 310.*—The armed neutrality set on foot in 1780 was a plan to escape from the severe but ancient way of dealing with neutrals which Great Britain enforced, by advancing certain milder principles of international law. These were that neutral vessels had a right to sail in freedom from harbor to harbor and along the coasts of belligerents; that the property of enemies not contraband of war on neutral ships should be free; that a port is blockaded only when evident danger attends on the attempt to run into it; that by these principles the detention and condemnation of neutral ships should be determined; and that, when such vessels had been unjustly used, besides reparation for loss, satisfaction should be made to the neutral sovereign. The parties to this league engaged to equip a fleet to maintain their principle, and were to act in concert. These parties were, besides Russia, which announced the system to the Powers at war, and invited other neutrals to cooperation, Denmark, Sweden, the Dutch provinces, Prussia, Austria, Portugal, and Naples. Two of the belligerents, France and Spain, concurred, but the other, England, replied that she stood by the law of nations and her treaties. England had reason to complain of this league, because some of the parties, then at peace with her,—Sweden and Denmark,—were at the time held by treaty with her to just the contrary principle; while others had even

punished neutral ships for what they now claimed to be a neutral right. The first armed neutrality did little more than announce a principle, for no collision took place between them and Great Britain; but it formed an epoch, because in no previous arrangement between Christian States had the rule, "free ships, free goods," been separated from the opposite, "unfree or hostile ships, hostile goods." In the peace of Versailles, which in 1783 terminated the war between England and France growing out of our revolution, the two Powers returned to the stipulations of the peace of Utrecht which have been mentioned above.

*Page 312.*—Twenty years after the first armed neutrality a second was formed, to which Russia, the Scandinavian Powers, and Prussia were parties; and which derived the pretext for its formation from differences of opinion concerning convoy (Sec. 209), as well as from alleged violations of neutral rights by English cruisers in the case of a Swedish vessel. The platform of this alliance embraced much the same principles as that of 1780, together with new claims concerning convoy. But nothing was gained by it saving some trifling concessions from Great Britain, while Russia, Denmark and Sweden ere long gave in their adherence to the English views of neutral liabilities.

*Page 361.*—A search at sea is exceedingly annoying, not only because it may affect an innocent party, and may cause expensive delays, but also because those who are concerned in it are often insolent and violent. What can be expected of a master of a privateer, or of an inferior officer in the navy, urged perhaps by strong suspicion of the neutral's guilt, but that he will do his office in the most offensive and irritating manner? To prevent these annoyances, Governments have sometimes arranged with one another, that the presence of a public vessel, or convoy, among a fleet of merchantmen, shall be evidence that the latter are engaged in a lawful trade. But neutrals have gone farther than this, they have claimed, without previous treaty, that a national ship convoying their trading vessels shall be a sufficient guaranty that no unlawful traffic is on foot. The beginnings of such a claim proceeded from the Dutch in the middle of the seventeenth century, but the first earnest and concerted movement on the part of neutrals for this end, was made near the end of the last century, at which time, also, the principal maritime Powers, excepting Great Britain, made treaties establishing the right of convoy between themselves. From this starting point, neutrals went on to claim that

this ought to be regarded as a right forming a part of the law of nations, and to employ force, when Great Britain exercised, without respect to the convoy, the right of search on the old plan. In 1798, the convoy of a fleet of Swedish merchantmen, having, in conformity with instructions, taken a British officer out of one of the vessels of commerce, the whole fleet was captured, and Sir William Scott, in the British admiralty court, decided that the act of violence subjected all the vessels to condemnation.<sup>1</sup> Not long after this, in 1800, a Danish frigate in the Mediterranean, acting as a convoy, fired on the boats sent from British frigates to examine the merchant vessels under its protection. The act was repeated in July of the same year by another frigate of the same nation, then neutral but ill-affected towards England. The frigate, named the *Freya*, with six trading vessels under its care, met six British ships of war, when the refusal of a demand to search the merchantmen led to acts of hostility, which resulted in the surrender of the Danish national vessel. In consequence, however, of negotiations between the two Governments, the ship was released, and it was agreed, on the part of the Danes, that the right of convoy should not be exercised, until some arrangement should be made touching this point.

These collisions were one of the reasons for the formation of the *second armed neutrality* of 1800. In that league the contracting Powers (Russia, Sweden, Denmark, and Prussia), among other stipulations, agreed that search should be prevented by a declaration of officers in charge of a convoy to the effect that the ships under his charge had no contraband goods on board.

The armed neutrality was succeeded by retaliatory embargoes, and on the 2d of April, 1801, the battle of Copenhagen prostrated the power of Denmark. Conventions were soon afterwards effected between Great Britain and the northern Powers—*i. e.*, Russia, Sweden, and Denmark, without Prussia—by which it was agreed that goods on neutral vessels, except contraband of war and enemy's property, should be free, and in which the following arrangements regarding convoy received the assent of the parties: (1) That the right of visit, exercised by belligerents on vessels of the parties to the armed neutrality, shall be confined to public vessels of war, and never committed to privateers. (2) That trading vessels of any of the contractants,

<sup>1</sup>Case of the *Maria*, 1 Robinson's Rep. 340-379. *Post*, p. 446.



under convoy, shall lodge with the commander of the convoying vessel their passports and certificates or sea-letters, drawn up according to a certain form. (3) That when such vessel of convoy and a belligerent vessel meet, they shall ordinarily be beyond the distance of cannon-shot from one another, and that the belligerent commander shall send a boat to the neutral vessel, whereupon proofs shall be exhibited both that the vessel of convoy has a right to act in that capacity, and that the visiting vessel in truth belongs to the public navy. (4) This done, there shall be no visit, if the papers are according to rule. Otherwise, the neutral commander, on request of the other, shall detain the merchantmen for visits, which shall be made in the presence of officers selected from the two ships of war. (5) If the commander of the belligerent vessels finds that there is reason in any case for further search, on notice being given of this, the other commander shall order an officer to remain on board the vessel so detained, and assist in examining into the cause of the detention. Such vessel is to be taken to the nearest convenient port belonging to the belligerent, where the ulterior search shall be conducted with all possible despatch.<sup>1</sup>

<sup>1</sup>See Woolsey, *Introduction to the Study of International Law*, 6th ed., Appendix ii, under 1800.

**PART II**  
**OFFICIAL DOCUMENTS**



## OFFICIAL DOCUMENTS BEARING ON THE ARMED NEUTRALITIES OF 1780 AND 1800

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### **Declaration of the Empress of Russia regarding the Principles of Armed Neutrality, addressed to the Courts of London, Ver- sailles and Madrid, February 28, 1780 (old style)<sup>1</sup>**

The Empress of all the Russias so fully manifested her sentiments of justice, equity and moderation, and gave such evident proofs, during the course of the war she had to wage against the Ottoman Porte, of the regard she has for the rights of neutrality and the liberty of universal commerce, that all Europe can testify thereto. This conduct, as well as the principles of impartiality that she has displayed during the present war, justly inspired her with the fullest confidence that her subjects would peaceably enjoy the fruits of their industry and the advantages belonging to a neutral nation. Experience has nevertheless proved the contrary. Neither the above-mentioned considerations, nor regard for the universal law of nations, have prevented the subjects of Her Imperial Majesty from being often molested in their navigation, and stopped in their operations, by those of the belligerent Powers.

These hindrances to the liberty of trade in general, and to that of Russia in particular, are of a nature to excite the attention of all neutral nations. The Empress finds herself obliged therefore to free it by all the means compatible with her dignity and the well-being of her subjects; but, before she puts this into execution, and with a sincere intention to prevent any future infringements, she thought it but just to publish to all Europe the principles she means to follow, which are the most proper to prevent any misunderstanding, or any occurrences that may occasion it. Her Imperial Majesty does it with the more confidence, as she finds these principles imbedded in the primitive law of peoples on which every nation is entitled to rely, and which the belligerent Powers can not ignore without violating the laws of neutrality, and without disavowing the maxims they have adopted, notably, in different treaties and public engagements.

<sup>1</sup>Translation. For the French text, see Appendix, p. 641.

They are reducible to the following points:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contra-band merchandise.

(3) That, as to the specification of the above-mentioned merchandise, the Empress holds to what is enumerated in the 10th and 11th articles of her treaty of commerce with Great Britain,<sup>1</sup> extending her obligations to all the Powers at war.

(4) That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

(5) That these principles shall serve as a rule for proceedings and judgments as to the legality of prizes.

Her Imperial Majesty, in making these points public, does not hesitate to declare, that to maintain them, and to protect the honor of her flag, the security of the trade and navigation of her subjects, she is preparing a considerable part of her maritime forces. This measure will not, however, influence the strict neutrality she does observe, and will observe so long as she is not provoked and forced to pass the bounds of moderation and perfect impartiality. It is only in this extremity that her fleet will have orders to go wherever honor, interest, and need may require.

In giving this solemn assurance with the usual openness of her character, the Empress can not do other than promise herself that the belligerent Powers, convinced of the sentiments of justice and equity which animate her, will contribute towards the accomplishment of these salutary purposes, which manifestly tend to the good of all nations and to the advantage even of those at war; and that in consequence they will furnish their admiralities and commanding officers with instructions conformable to the above-mentioned principles, founded upon the primitive laws of people, and so often adopted in their conventions.

<sup>1</sup>Articles 10 and 11 of this treaty are embodied in the British instructions to the commanders of war-ships and privateers of November 20, 1780, *post*, p. 329.

**Russian Memorandum containing a Project for an Armed Neutrality, presented to the States-General of the Netherlands, April 3, 1780<sup>1</sup>**

High and Mighty Lords:

The underwritten Envoy Extraordinary from the Empress of all the Russias has the honor to communicate to you a copy of the declaration which the Empress his sovereign has made to the belligerent Powers.<sup>2</sup> Your High Mightinesses may look upon this communication as a particular mark of the attention of the Empress for the Republic, which is equally interested in the reasons which occasioned the declaration. He has further orders to declare to Your High Mightinesses, in the name of Her Imperial Majesty, that how desirous soever she may be on the one hand to maintain the strictest neutrality during the present war, yet Her Majesty is as determined to take the most efficacious means to support the honor of the Russian flag, the security of the trade, and the navigation of her subjects, and not suffer either to be hurt by any of the belligerent Powers; that, in order to prevent on this occasion any misunderstanding or false interpretation, she thought it necessary to specify in the declaration the limits of a free trade, and what is called contraband. That, if the definition of the former is founded upon the clearest notions of natural right, the latter is literally taken from the treaty of commerce between Russia and Great Britain, by which Her Imperial Majesty means incontestably to prove her good faith and impartiality towards each party; that she consequently apprehends that the other trading Powers will immediately come into her way of thinking relative to neutrality.

From these considerations, Her Imperial Majesty has ordered the underwritten to invite Your High Mightinesses to make a common cause with her, as such an union may serve to protect the trade and navigation, and at the same time observe a strict neutrality, and to communicate to Your High Mightinesses the regulation she has in consequence taken.

The same invitation has been made to the Courts of Copenhagen, Stockholm and Lisbon, in order that by the united endeavors of all the neutral maritime Powers, a natural system, founded on justice, might be established and legalized in favor of the trade of neutral

<sup>1</sup>*Annual Register*, 1780, p. 346. A similar proposal was made to the Courts of Copenhagen, Stockholm and Lisbon.

<sup>2</sup>*Ante*, p. 273.

nations, which by its real advantages might serve for a rule for future ages.

The underwritten does not doubt but your High Mightinesses will, without delay, take the invitation of Her Imperial Majesty into consideration, and concur in immediately making a declaration to the belligerent Powers, founded on the same principles as that of the Empress, explaining at the same time the nature of a free and contraband trade, conformable to their respective treaties with the other nations.

For the rest, the underwritten has the honor to assure your High Mightinesses, that if, to establish such a glorious and advantageous system upon the most solid basis, they wished to open a negotiation with the above-mentioned neutral Powers on this subject, the Empress, his sovereign, is ready to join you.

Your Mightinesses will easily see the necessity of accelerating your resolutions upon objects of such importance and advantage for humanity in general. The underwritten begs of you to give him a speedy answer.

DEMETRI PRINCE GALLITZIN

HAGUE, *April 3, 1780.*

**Explanation requested of the Court of Russia by the Court of Sweden relative to the Project for an Armed Neutrality, April 5, 1780<sup>1</sup>**

ARTICLE 1

How and in what manner shall a reciprocal protection and mutual assistance be given?

ARTICLE 2

Shall each particular Power be obliged to protect the general commerce of all, or may it at the same time employ a part of its armament in the protection of its own particular commerce?

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 3, p. 170.

## ARTICLE 3

If several of these combined squadrons should meet, or, for example, one or more of their vessels, what shall be the rule of their conduct towards each other, and how far shall the neutral protection extend?

## ARTICLE 4

It seems essential to agree upon the manner in which representations shall be made to the Powers at war, if, notwithstanding our measures, their ships of war, or armed vessels, should continue to interrupt our commerce in any manner. Must these remonstrances be made in the general name of the united Powers, or shall each particular Power plead its own cause only?

## ARTICLE 5

Lastly, it appears essentially necessary to provide against this possible event, where one of the united Powers, seeing itself driven to extremities against any of the Powers actually at war, should claim the assistance of the allies in this convention to do itself justice. In what manner can this be best concerted? A circumstance which equally requires a stipulation, that the reprisals in that case shall not be at the will of such party injured, but that the common voice shall decide: otherwise an individual Power might at its pleasure draw the rest, against their inclinations and interests, into disagreeable extremities, or break the whole league and reduce matters into their original state, which would render the whole fruitless and of no effect.

**Declaration of the Court of London to the States-General of the Netherlands, withdrawing All Treaty Privileges, April 17, 1780<sup>1</sup>**

Since Great Britain was drawn into an involuntary war with France and Spain, the King's Ambassador to the States-General of the United Provinces has presented a number of memoranda demanding the assist-

<sup>1</sup>Translation. French text, *ibid.*, p. 173.



ance stipulated by treaties. Although these representations were reiterated in the most urgent manner in the memorandum of March 21, they have met with no response, and their High Mightinesses have displayed no intention to subscribe to them.

By thus deferring the fulfilment of their most positive engagements, they are deserting the alliance which has existed so long between the Crown of Great Britain and the Republic, and are placing themselves on the level of neutral Powers that are not bound to this country by any treaty. The principles of wisdom and equity, consequently, require the King to consider the States no longer in any other relation than the distant one in which they have placed themselves, and His Majesty, having taken this subject under consideration, has, with the advice of his Council, deemed it proper to order the immediate carrying out of the measures which were formally set forth in the memorandum of March 21,<sup>1</sup> last, and which had previously been hinted to Count van Welderen, Envoy Extraordinary and Plenipotentiary of the Republic, in a verbal declaration by Lord Stormont, one of the Secretaries of State, nearly two months before the delivery of the aforesaid memorandum.

For these reasons, the King, with the advice of his Council, declares that the subjects of the United Provinces shall henceforth be considered on the footing of those of neutral Powers, which have no treaty privileges. By these presents, His Majesty suspends provisionally and until further orders all stipulations specifically intended to favor in time of war the freedom of navigation and commerce of the subjects of the States-General, as set forth in the various treaties in force between His Majesty and the Republic, and particularly in the marine treaties concluded between Great Britain and the United Provinces at London on December 1, 1674.<sup>2</sup>

His Majesty, animated by a feeling of humanity, desiring nevertheless to spare the interests of individuals, and not seeking to cause them loss by an act taking them unawares, declares, moreover, with the advice of his Council, that the present ordinance shall not go into effect until the following dates, to wit:

In the north seas and channel twelve days from this date.

From the channel, the British seas and the north seas to the Canary Islands inclusive, both in the ocean and in the Mediterranean, the time will be six weeks from the date of these presents.

<sup>1</sup>Hennings, *Sammlung*, vol. 1, p. 52.

<sup>2</sup>Dumont, vol. 7, pt. 1, p. 282.

The period will be three months from the Canary Islands to the equinoctial line or equator.

Finally, it will be six months, for the waters situated beyond the equator, and in general in all other quarters of the world without exception, or without a more specific determination of time or place.

#### RESCRIPT ADDED TO THE FOREGOING ORDER

Inasmuch as, in accordance with our order in Council, dated April 17, 1780, the various treaties granting special privileges to subjects of the States-General of the United Provinces in the matter of their commerce and navigation in time of war, are suspended, and as the subjects of the States-General are to be considered on the same footing as those of other neutral States having no treaty privileges, until it shall please us formally to signify the contrary, the commanders of our war-ships and those of all ships and vessels which have letters of marque and of reprisal are authorized by these presents to seize and detain all ships and vessels belonging to subjects of the States-General whenever they are found to have on board any effects belonging to the enemies of His Majesty or effects that are considered by the general law of nations as contraband of war.

#### **Reply of the King of Spain to the Declaration of the Empress of Russia, April 18, 1780<sup>1</sup>**

The King, being informed of the Empress's sentiments with respect to the belligerent and neutral Powers, by a memorial remitted to the Compte de Florida Blanca on the 15th instant by Mr. Etienne de Zinowief, Minister to Her Imperial Majesty: the King considers this as the effect of a just confidence which His Majesty has on his part merited; and it is yet more agreeable that the principles adopted by this sovereign should be the same as have always guided the King, and which His Majesty has for a long time, but without success, endeavored to cause England to observe, while Spain remained neuter. These principles are founded in justice, equity, and moderation; and these same principles Russia and all the other Powers have experi-

<sup>1</sup>*Annual Register*, 1780, p. 350. French text in Martens, *Récueil*, 2d ed., vol. 3, p. 164.

enced in the resolutions formed by His Majesty; and it has been entirely owing to the conduct of the English navy, both in the last and the present war (a conduct wholly subversive of the received rules among neutral Powers) that His Majesty has been obliged to follow their example; since the English paying no respect to a neutral flag, if the same be laden with effects belonging to the enemy, even if the articles should not be contraband, and that flag not using any means of defending itself, there could not be any just cause why Spain should not make reprisals, to indemnify herself for the great disadvantages she must otherwise labor under. The neutral Powers have also laid themselves open to the inconveniences they have suffered, by furnishing themselves with double papers, and other artifices, to prevent the capture of their vessels; from which have followed captures and detentions innumerable, and other disagreeable consequences, though in reality not so prejudicial as pretended; on the contrary, some of these detentions have turned to the advantage of the proprietors, as the goods, being sold in the port where they were condemned, have frequently gone off at a higher price than they would have done at the place of their destination.

The King, nevertheless, not contented with these proofs of his justification, which have been manifest to all Europe, will this day have the glory of being the first to give the example of respecting the neutral flag of all the Courts that have consented, or shall consent, to defend it, till His Majesty finds what part the English navy takes, and whether they will, together with their privateers, keep within proper bounds. And to show to all the neutral Powers how much Spain is desirous of observing the same rules in time of war as she was directed by whilst neuter, His Majesty conforms to the other points contained in the declaration of Russia. To be understood, nevertheless, that, with regard to the blockade of Gibraltar, the danger of entering subsists, as determined by the fourth article of the said declaration. These dangers may, however, be avoided by the neutral Powers, if they conform to those rules of precaution established by His Majesty's declaration of the 13th of last March,<sup>1</sup> which has been communicated to the Court of Petersburg by his Minister.

FLORIDA BLANCA

At ARANJUEZ, 18 April, 1780.

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 92.

**British Instructions to War-ships and Privateers, April 19, 1780<sup>1</sup>**

An additional instruction to all ships of war and privateers that have or may have letters of marque against the French King, or the King of Spain, their vassals or subjects, or others inhabiting within any of their countries, territories, or dominions, or against any other enemies or rebellious subjects of the Crown of Great Britain. Given at our Court at St. James's the nineteenth day of April, 1780, in the twentieth year of our reign. [L. S.]

Whereas by our order in council, bearing date the seventeenth of this instant April, 1780, the several treaties, whereby peculiar privileges are granted to the subjects of the States-General of the United Provinces, respecting their trade and navigation in time of war, are suspended, and the subjects of the States-General are to be considered upon the same footing with the subjects of other neutral States, not privileged by treaty, until our pleasure to the contrary be formally signified. The commanders of our ships of war, and the commanders of all ships and vessels having letters of marque and reprisal, are hereby authorized and required to seize and detain all such ships and vessels belonging to the subjects of the States-General, as they shall meet, having any goods belonging to His Majesty's enemies on board, or goods which are deemed contraband by the general law of nations.

But it is our pleasure, from a regard to the interest of individuals, and a desire to prevent their suffering by any surprise, that the effect of our afore-mentioned order in council shall take place at the following terms, viz. :

In the Channel and the North Seas, twelve days after the date of our said order in council.

From the Channel, the British Seas, and the North Seas, as far as the Canary Islands inclusive, either in the ocean or Mediterranean, the term shall be six weeks from the date of our said order.

Three months from the Canary Islands, as far as the equinoctial line or equator.

And lastly, six months beyond the equinoctial line or equator, and in all other parts of the world without any exception, or other more particular description of time and place.

By His Majesty's Command,

STORMONT

<sup>1</sup>Hennings, vol. 2, p. 62. Previous instructions were issued: May 2, 1776, and March 27, 1777, against the American Colonies (*ibid.*, pp. 19, 27); August 5, and December 15, 1778, against France (*ibid.*, pp. 44, 59).

**Reply of the Court of London to the Declaration of the Empress of Russia, April 23, 1780<sup>1</sup>**

During the course of the war, wherein His Britannic Majesty finds himself engaged through the unprovoked aggression of France and Spain, he hath constantly manifested his sentiments of justice, equity, and moderation, in every part of his conduct. His Majesty hath acted towards friendly and neutral Powers according to their own procedure respecting Great Britain, and conformable to the clearest principles, generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeable to the tenor of his different engagements with other Powers; those engagements have altered this primitive law, by mutual stipulations, proportioned to the will and convenience of the contracting Parties.

Strongly attached to Her Majesty of all the Russias, by the ties of reciprocal friendship, and common interest, the king, from the commencement of those troubles, gave the most precise orders respecting the flag of Her Imperial Majesty, and the commerce of her subjects, agreeable to the law of nations, and the tenor of the engagements stipulated by his treaty of commerce with her, and to which he shall adhere with the most scrupulous exactness.

The orders to this intent have been renewed, and the utmost care will be taken for their strictest execution.

It may be presumed, not the least irregularity will happen; but in case any infringements, contrary to these repeated orders, take place, the courts of admiralty, which in this, like all other countries, are established to take cognizance of such matters, and in all cases do judge solely by the law of nations, and by the specific stipulations of different treaties, will redress every hardship in so equitable a manner, that Her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses.

<sup>1</sup>*Annual Register*, 1780, p. 349. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 160.

**Extract from the Register of Resolutions of the States-General of the Netherlands, April 24, 1780, replying to the Russian Memorandum<sup>1</sup>**

Having deliberated by supposition on the memorandum which the Prince Gallitzin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, presented to the Assembly on the 3d instant, accompanied by a declaration made by Her said Imperial Majesty to the Courts of England, France, and Spain, with regard to the freedom of commerce and navigation of her subjects, in which memorandum this Minister makes known to Their High Mightinesses the disposition of his sovereign to protect, in concert with neutral Powers, the commerce and navigation of their respective subjects, as more fully set forth in the above-mentioned documents of the 3d; it has been deemed well and it has been decided to reply to the Prince Gallitzin with regard to his said memorandum that Their High Mightinesses have received with great satisfaction the communication respecting her views which Her Imperial Majesty has been pleased to have presented to them, and the declaration that she has had submitted to the Courts of London, Versailles, and Madrid; that Their High Mightinesses look upon this communication as a striking proof of the fact that Her Imperial Majesty is well disposed toward the Republic and that they feel it to be an honor and a duty to reply cordially and sincerely; that Their High Mightinesses commend and consider as a further effect of the recognized magnanimity and justice of Her Imperial Majesty, as well as the goal which she has set before herself, that the means which she has conceived to maintain during the present war the most scrupulous neutrality with the belligerent Powers, and to assure not only the honor of the flag of Russia and the freedom of commerce and of navigation of her subjects, and not to permit any of the Powers that are now at war to inflict the slightest injury upon them, but also to protect the liberties and tranquillity of Europe, and to fix and establish upon the most solid foundations of equity and the law of nations, and of treaties still in force, an equitable system for the navigation and commerce of neutral Powers.

That Their High Mightinesses, like Her Imperial Majesty, desiring to observe a strict neutrality during the present war, have experienced only too well the injuries suffered by the navigation and commerce

<sup>1</sup>Translation. French text, *ibid.*, p. 168.

of neutral Powers through the vague and arbitrary conceptions held by the belligerent Powers on the right of neutrals, which are influenced by their individual interests and their war operations, and it is for this reason that Their High Mightinesses, like Her Imperial Majesty, deem it absolutely necessary that this right be established upon solid foundations and maintained in concert by the maritime neutral Powers; that with respect to the determination of this right Their High Mightinesses, conforming entirely to the five points contained in the declaration made by Her Imperial Majesty to the Courts of Versailles, Madrid, and London, and communicated in her name to Their High Mightinesses on April 3 by the Prince Gallitzin, are, following the example of Her Imperial Majesty, ready to make a similar declaration to the belligerent Powers. Their High Mightinesses being thus disposed to enter into a conference with this Princess and the other neutral maritime Powers respecting the measures by means of which, by the observance of strict neutrality between the Powers at war, freedom of navigation and commerce may be maintained with their united forces in the most effectual manner, both now and hereafter.

An extract of the present resolution of Their High Mightinesses shall be transmitted by their agent van der Burch de Spieringshoeck to the Prince Gallitzin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, who shall be requested to communicate it to Her Imperial Majesty and to present to her this reply under the most favorable aspect, accompanying it with his good offices.

### **Reply of the King of France to the Declaration of the Empress of Russia, April 25, 1780<sup>1</sup>**

The war in which the King is engaged having no other object than the attachment of His Majesty to the freedom of the seas, he could not but with the truest satisfaction see the Empress of Russia adopt the same principle and resolve to maintain it. That which Her Imperial Majesty claims from the belligerent Powers is no other than the

<sup>1</sup>*Annual Register*, 1780, p. 349; Martens, *Recueil*, 2d ed., vol. 3, p. 162.

rules already prescribed to the French marine, the execution of which is maintained with an exactitude known and applauded by all Europe.

The liberty of neutral vessels, restrained only in a few cases, is the direct consequence of neutral right, the safeguard of all nations, and the relief even of those at war. The King has been desirous, not only to procure a freedom of navigation to the subjects of the Empress of Russia, but to those of all the States who hold their neutrality, and that upon the same conditions as are announced in the treaty to which His Majesty this day answers.

His Majesty thought he had taken a great step for the general good, and prepared a glorious epocha for his reign, by fixing by his example, the rights which every belligerent Power may, and ought to acknowledge to be due to neutral vessels. His hopes have not been deceived, as the Empress, in avowing the strictest neutrality, has declared in favor of a system which the King is supporting at the price of his people's blood, and that Her Majesty adopts the same rights as he would wish to make the basis of the maritime code.

If fresh orders were necessary to prevent the vessels of Her Imperial Majesty from being disturbed in their navigation by the subjects of the King, His Majesty would immediately give them; but the Empress will no doubt be satisfied with the dispositions made by His Majesty in the regulations he has published. They do not hold by circumstances only, but they are founded on the right of nations, and quite suitable to a prince who finds the happiness of his own kingdom in that of the general prosperity. The King wishes Her Imperial Majesty would add to the means she has fixed to determine what merchandises are reckoned contraband in time of war, precise rules in the form of the sea papers with which the Russian ships will be furnished.

With this precaution, His Majesty is assured nothing will happen to make him regret the having put the Russian navigators on as advantageous a footing as can be in time of war. Happy circumstances have more than once occurred to prove to the Courts how important it is for them to explain themselves freely relative to their respective interests.

His Majesty is very happy to have explained his way of thinking to Her Imperial Majesty upon so interesting a point for Russia, and the trading Powers of Europe. He the more sincerely applauds the principles and views of the Empress, as His Majesty partakes of the



same sentiments which have brought Her Majesty to adopt those measures, which must be to the advantage of her own subjects, and all other nations.

VERSAILLES, *April 25, 1780.*

**Declaration of the Court of France to the States-General of the Netherlands, indicating Approval of the Armed Neutrality, April 26, 1780<sup>1</sup>**

The King's political system is founded essentially on the invariable principles of justice and moderation. His Majesty gave the most unequivocal proof thereof, when differences first arose between him and the King of England, by showing his good-will toward all neutral Powers through the extension of provisions most favorable to their prosperity and by not proposing any conditions other than that of the most absolute impartiality.

He most sincerely regrets that he is unable to recognize these characteristics in the resolution of the States-General of November 19, 1778, by which Your High Mightinesses suspended your protection with respect to that branch of commerce which was assured freedom by the laws of public equity and the most precise treaty stipulations. The King then charged me to announce to Your High Mightinesses "that, if you were determined thus to sacrifice part of your rights to his enemies, His Majesty could not continue to grant your subjects advantages promised conditionally in his recent regulations, nor the time-honored favors which commerce enjoys in the States and which are not the result of any convention but of an hereditary good-will and affection."

Your High Mightinesses hastened to assure the King that you were determined to observe the strictest neutrality during the troubles that had arisen between France and England; but if you announced that the act suspending the Republic's effectual protection of vessels laden with wood for building purposes would be regarded as null and void,

<sup>1</sup>Translation of note from the French Ambassador at The Hague. French text, Hennings, *Sammlung von Staatsschriften*, vol. 1, p. 59.

you declared at the same time that all discussion of this matter would be postponed until after the deliberations on the subject of convoys.

His Majesty, not perceiving in this new disposition a real change of intention, did not see how he could refrain from putting limitations on the advantages granted in the various ports of his kingdom to Dutch commerce, since Your High Mightinesses continued to suspend, in favor of the enemies of his Crown, the exercise of the most firmly established rights; but he has been pleased to continue these advantages with respect to various members of the Republic according as they have adopted a system which, while being in accord with his views, is essentially just. He has applauded the demands made by Your High Mightinesses on the Court of London, your efforts to regain for the flag of the United Provinces the consideration that it once enjoyed, as well as the positive order which you have given that a squadron hold itself in readiness to escort and to protect all vessels laden with articles not included among contraband goods, when it was learned that unlimited convoys would be detained; and it has been his constant desire that Your High Mightinesses might at length cease to place obstacles in the way of his demonstrations of affection by your absolute abandonment of the fundamental principles of your interests.

Being informed of your final intentions in this respect and assured of the development which Your High Mightinesses are determined to give to your neutrality by granting for an indefinite period effectual protection to the commerce and navigation of your subjects, His Majesty has listened with pleasure to the representations which a number of members of the union, and especially the Prince who is at the head of the Republic, have made to him regarding the restraints placed upon the commerce of the different provinces in the ports of his kingdom; and His Majesty has commanded me to say to Your High Mightinesses "that he has revoked by a decree of his Council dated April 22, 1780,<sup>1</sup> a true copy of which I have the honor to hand you, the decrees of January 14,<sup>2</sup> April 27, and September 18, 1779."

But he does not wish to confine himself to restoring in this way the subjects of Your High Mightinesses to the enjoyment of the favors which they experienced before the publication of these new laws, and to the enjoyment of all the advantages promised conditionally by his regulations concerning the commerce and navigation of neutrals.

<sup>1</sup>*Ibid.*, p. 61

<sup>2</sup>*Ibid.*, vol. 2, p. 178

It is his wish to give you a striking proof of his good-will, and he charges me to announce to Your High Mightinesses "that he has ordered restitution of all sums levied by the officers of his farms by virtue of the said decrees."

He flatters himself with the belief that such convincing evidence of his affection will persuade Your High Mightinesses not only that he takes the sincerest interest in the prosperity of the United Provinces, but also that justice, moderation, and beneficence form the essential and invariable basis of his policy and his acts.

**Reply of the Court of Russia to the Request of Sweden for Explanations respecting the Project for an Armed Neutrality, April 29, 1780<sup>1</sup>**

ARTICLE 1

As to the manner in which protection and mutual assistance shall be granted, it must be settled by a formal convention, to which all the neutral Powers will be invited, the principal end of which is, to ensure a free navigation to the merchant ships of all nations. Whenever such vessel shall have proved from its papers, that it carries no contraband goods, the protection of a squadron, or vessels of war, shall be granted her, under whose care she shall put herself, and which shall prevent her being interrupted. From hence it follows:

ARTICLE 2

That each Power must concur in the general security of commerce. In the meantime, the better to accomplish this object, it will be necessary to settle, by means of a separate article, the places and distances which may be judged proper for the station of each Power. From that method will arise this advantage, that all the squadrons of the allies will form a kind of chain, and be able to assist each other; the particular arrangement to be confined only to the knowledge of the

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 171. See also *Annual Register*, 1780, p. 355. For the Swedish questions, see *ante*, p. 276.

allies, though the convention in all other points, will be communicated to the Powers at war, accompanied with all the protestations of a strict neutrality.

### ARTICLE 3

It is undoubtedly the principle of a perfect equality, which must regulate this point. We shall follow the common mode with regard to safety. In case the squadrons should meet and engage, the commanders will conform to the usages of the sea service, because, as is observed above, the reciprocal protection, under these conditions, should be unlimited.

### ARTICLE 4

It seems expedient that the representations mentioned in this article be made by the party aggrieved: and that the Ministers of the other confederate Powers support those remonstrances in the most forcible and efficacious manner.

### ARTICLE 5

We feel all the importance of this consideration; and, to render it clear, it is necessary to distinguish the case.

If any one of the allied Powers should suffer itself to be drawn in by motives contrary to the established principles of a neutrality and perfect impartiality, should injure its laws, or extend their bounds, it can not certainly be expected that the others should espouse the quarrel; on the contrary, such a conduct would be deemed an abandoning the ties which unite them. But if the insult offered to one of the allies should be hostile to the principles adopted and announced in the face of all Europe, or should be marked with the character of hatred and animosity, inspired by resentment, these common measures of the confederacy, which have no other tendency than to make, in a precise and irrevocable manner, laws for the liberty of commerce, and the rights of every neutral nation, then it shall be held indispensable for the united Powers to make a common cause of it (at sea only) without its being a ground-work for other operations, as these connections are purely maritime, having no other object than naval commerce and navigation.

From all that is said above, it evidently results, that the common will of all, founded upon the principles admitted and adopted by the

contracting Parties, must alone decide, and that it will always be the fixed basis of the conduct and operations of this union. Finally, we shall observe, that these conventions suppose no other naval armament than what shall be conformable to circumstances, according as those shall render them necessary, or as may be agreed. It is probable that this agreement, once ratified and established, will be of the greatest consequence; and that the belligerent Powers will find in it sufficient motives to persuade them to respect the neutral flag, and prevent their provoking the resentment of a respectable communion, founded under the auspices of the most evident justice, and the sole idea of which is received with the universal applause of all impartial Europe.

**Declaration of His Danish Majesty regarding the Neutrality of the Baltic Sea, communicated to the Courts of the Belligerent Powers, May 8, 1780<sup>1</sup>**

The States of the King of Denmark and Norway are situated in such a way that the commerce of his subjects with the Provinces belonging to his Crown would be disturbed, unless His Majesty took all measures capable of guaranteeing the Baltic and its coasts from hostilities and acts of violence of all kinds, and of protecting it from raids by privateers and armed vessels.

In order, therefore, to keep open, free and tranquil communication between his Provinces, the King has resolved that the Baltic Sea being a closed sea, incontestably so by reason of its geographical situation, where all nations should and may navigate in peace and enjoy all the advantages of perfect tranquillity, His Majesty could not admit thereto armed vessels of the Powers at war for the purpose of committing acts of hostility against any one whatsoever.

The other two Courts of the north adopt and announce the same system, which is the more just and natural because all the Powers whose States surround the Baltic enjoy the most profound peace and regard it as one of the greatest blessings that sovereigns can secure to their subjects.

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 175.

**Russian Ordinance concerning Commerce and Navigation, May 19, 1780<sup>1</sup>****ARTICLE 1**

Merchant ships may not take part in the war, either directly or indirectly, or under any pretext whatsoever; neither may they give aid to any of the belligerent Powers by supplying it with contraband goods under the flag of Russia. Contraband goods comprise specifically cannons, mortars, muskets, pistols, bombs, grenades, bullets or balls suitable for shooting, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, scabbards, cartridge-boxes, saddles, and bridles. Merchant ships must also take great care not to have on board a greater quantity of such munitions of war than it needs for its own use, that is to say, a quantity sufficient to supply each sailor or passenger.

**ARTICLE 2**

All other goods, to whomsoever they may belong, and even if they belong to subjects of one of the belligerent Powers, may be freely transported on Russian vessels, and shall enjoy, together with the goods of our subjects, the protection of the Russian flag, except the goods mentioned in Article 1 under the head of contraband, which are declared to be such in Article 11 of our treaty of commerce with England.<sup>2</sup> In consideration of this security of goods permitted on board neutral vessels, our subjects must take care not to ship effects belonging to them on vessels of the nations at war, in order to avoid any unpleasantness or untoward incident.

**ARTICLE 3**

Every vessel sailing from the port of this city or from any other port of our Empire must be supplied with sufficient proofs that it belongs to Russian subjects; that is to say, the customary ship's register and a customs certificate setting forth:

- (1) The kind and quantity of the goods on board.
- (2) For whose account they have been purchased and to whom they are shipped.
- (3) To what port and to whom the vessel and its cargo are consigned.

<sup>1</sup>Translation. French text, *ibid.*, p. 271.

<sup>2</sup>*Post*, p. 329.

For greater security the certificates issued by the custom house shall be viséed by the admiralty, or in its absence by the magistrate of the place.

#### ARTICLE 4

These prerogatives shall be enjoyed not only by our born subjects but also by foreigners, who are domiciled under our rule and pay public taxes like our own subjects; that is to say, as long as they dwell in our country, since in any other case they would not be permitted to use the merchant flag of Russia.

#### ARTICLE 5

Each individual Russian vessel, even though a single owner sends two or three vessels at the same time to the same place, must be provided with the documents mentioned in Article 3, which may prove their ownership in case the vessels should become separated during the voyage or in case they should be forced to follow different courses.

#### ARTICLE 6

It is forbidden for any Russian vessel to have false or equivocal bills of lading, charter parties, or other ship's papers, still more, false declarations, inasmuch as these last always expose them to inevitable danger. Therefore special attention should be given to see that the documents are in good order and that they state clearly, as specified above, the true destination of the vessel and the character of its cargo. It is also necessary that the contract between the owner of the goods and the master of the vessel or the agreement known as the charter party be always on board. But, as it quite often happens that the owner of the goods, in shipping them, either on his own vessel or on some other neutral vessel chartered by him, decides in advance, solely on speculation, to sell them in a certain port, and, in case the price in that port is too low, in some more distant port, he must not, in such a case, fail to specify and determine the two ports in the order of the course and of their situation, in one and the same bill of lading, and not in two. This same precaution must be observed with regard to charter parties, in order that there may be no differences between them and the bills of lading. And, in case any of our subjects, in contempt of these

provisions, should stoop to artifice and duplicity, they may be assured that they shall never enjoy our protection, which shall be given only to lawful and innocent commerce, and under no circumstances to illicit and fraudulent trade.

#### ARTICLE 7

Every Russian vessel which, after having unloaded its cargo in some foreign port, purposes to return to its country or to proceed further to some other foreign point, must provide itself in this port, and in any other where it may stop to trade, with the documents required by the practice of the country, in order that it may be ascertained at any time to what nation the vessel belongs, from what port it comes, for what port it is bound, and with what new goods it has been loaded.

#### ARTICLE 8

Inasmuch as the aforesaid documents are absolutely necessary to prove neutral ownership of goods on board the ship, particular care must be exercised not to throw them overboard, or any other writings or papers without exception, or on any occasion whatever, particularly on encountering another vessel, since by such a proceeding the vessel may lay itself open to well-founded suspicion and to disagreeable consequences.

#### ARTICLE 9

Care should be taken that there be not on board a Russian vessel a merchant, a commercial employee, or other officer, or more than one third of the sailors, who are subjects of one of the belligerent Powers, since otherwise such a vessel might meet with many unpleasant incidents. Vessels purchased in time of war from subjects of belligerent Powers would be exposed to similar complications. Therefore, now and as long as the present war lasts, they may not be purchased for any other purpose than for navigation in the Baltic or in the Black Sea.

#### ARTICLE 10

It is forbidden, in general, to carry any goods from any point whatever to places that are now under blockade or siege, by land or by sea; and if any of our merchants should risk such unlawful commerce, they shall not, in spite of their loss, have the slightest right to seek our protection.



## ARTICLE 11

All our subjects, who happen to be in foreign lands for commercial purposes, must conform strictly to the local mercantile laws in force as well as to the ordinances of the place where they reside or to which they send their vessels. And in order that these laws and ordinances may be known to them so far as possible, the Department of Foreign Affairs shall communicate to our Chamber of Commerce all papers relating thereto, so that all merchants may be informed thereof by means of the gazettes.

## ARTICLE 12

Our purpose to protect and to defend in the most effectual manner the commerce and navigation of our faithful subjects in nowise contemplates that our course shall result in injury to any of the belligerent Powers, or that individual merchants take advantage of it for the purpose of making unlawful gains. Therefore we expressly forbid the merchants of our empire to permit foreigners to sail ships or to carry on commerce under their name. In case of contravention of our will in this respect, the guilty party shall forfeit his right to engage in maritime commerce and to enjoy our imperial protection therein.

If our subjects, who are engaged in maritime commerce, strictly comply with the terms of this ordinance, they can count, in return, on our full and unlimited protection in their business in a foreign country, as well as on the attentive and zealous intercession of the Minister, agents, or consuls, who reside there in our behalf. To this end our Department of Foreign Affairs will provide them in due time with proper instructions. On the other hand, those of our subjects who shall not observe these rules can not have the slightest claim on our protection in the misfortunes and losses which may result from wilfully neglecting to use the necessary circumspection enjoined upon them. The Chamber of Commerce, in notifying our present ordinance to Russian merchants engaged in commerce in the ports, shall not fail at the same time to supply the custom houses with the necessary instructions relating thereto, nor to inform the heads of the Governments where there are ports of our will, in order that it may be uniformly observed in all the tribunals, in so far as they are concerned therewith.

Given at Czarsko-Zelo, May 8/19, 1780.

CATHERINE

**Reply of the Court of France to the Danish Declaration regarding the Neutrality of the Baltic Sea, May 25, 1780<sup>1</sup>**

Far from wishing to extend the theater of the war, the King has constantly manifested his desire to restrict it. The solicitude of His Majesty to fix precisely the portions of neutral coasts where his subjects may not attack the enemy has already proved how greatly he respected the sovereignty of all the Powers that border on the Baltic Sea; since they have declared themselves neutral, His Majesty has regarded that sea as closed by order of its sovereigns. He shall continue to follow the same course, and since it is apparently the wish of His Danish Majesty that orders be given that no French vessel shall commit acts of hostility beyond the sound, the Envoy of Denmark can assure His Majesty that the King will gladly comply with his desire.

His Majesty has nothing more at heart than to do what is advantageous and agreeable to neutral Powers, those Powers especially that show themselves to be the protectors of the freedom of the seas, and in particular His Danish Majesty, whose confidence and friendship he earnestly desires to keep.

VERGENNES

**Explanatory Article between Great Britain and Denmark relative to Neutral Trade, July 4, 1780<sup>2</sup>**

His Majesty the King of Denmark and Norway, and His Majesty the King of Great Britain, animated with an equal desire to do away the differences which the doubtful interpretation of the 3rd article of the treaty of alliance and commerce, concluded in 1670,<sup>3</sup> between Their Majesties Christian V and Charles II, of glorious memory, has occasioned, and desirous of preventing whatever might disturb in future the sincere and reciprocal friendship that unites them, have agreed to substitute for the aforesaid article an explanatory article, conceived in the manner and tenor following:

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 176.

<sup>2</sup>Translation. *British and Foreign State Papers*, vol. 1, pt. 1, p. 400.

<sup>3</sup>Treaty of July 11, 1670. Dumont, vol. 7, pt. 1, p. 132.

## EXPLANATORY ARTICLE

The two contracting Sovereigns reciprocally engage, for themselves and their successors, not to furnish to the enemies of either party, in time of war, any succor, neither soldiers, nor vessels, nor any effects and merchandise called contraband; and in like manner to prohibit their subjects from so doing, and to punish severely, and as destroyers of the peace, those who should dare to act contrary to their prohibitions in this respect; but in order to leave no doubt upon what is to be understood by the term contraband, it is agreed that this denomination is meant only to comprehend arms, as well firearms as other kinds, with their furniture, as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket-rests, bandoliers, gun-powder, matches, saltpetre, balls, pikes, swords, helmets, cuirasses, halberts, lances, javelins, horses, saddles, pistol-holsters, belts, and generally all other warlike implements, also ship-timber, tar, pitch and rosin, sheet copper, sails, hemp and cordage, and generally whatever immediately serves for the equipment of vessels; unwrought iron and deal planks, however, excepted.

But it is expressly declared that this kind of contraband merchandise shall by no means comprehend fish and flesh, fresh or salted, wheat, flour, corn, or other grain, vegetables, oil, wine, and generally whatever serves for the nourishment and support of life, so that all these articles may always be sold and transported like other merchandise, even to places in the possession of an enemy of the two Crowns, provided that such places are neither besieged nor blockaded.

And Their Majesties being desirous that this article, as it is actually settled, should hold precisely the place of that for which it is substituted, so that it shall have the same effect and validity as if it were inserted, word for word, in the said treaty, and that it should be considered as authentic and obligatory as the treaty itself; they have agreed that it should be so declared and decreed by a declaration signed by the Minister for Foreign Affairs.

For which purpose His Danish Majesty has authorized and furnished the undersigned with his full powers, and in virtue of which I have executed this present act, serving as a declaration to fix the 3rd article of the treaty of 1670, in the manner in which it is found written and inserted in this act, signed with my hand.

Done at Copenhagen, the 4th July, 1780.

[L. S.] A. BERNSTORFF

**Declaration of His Danish Majesty to the Courts of London, Versailles and Madrid, July 8, 1780<sup>1</sup>**

If the most exact and perfect neutrality, with the most regular navigation, and the most inviolable respect to treaties, could have kept free the commerce of the subjects of the King of Denmark and Norway from the inroads of the Powers with whom he is at peace, free and independent, it would not be necessary to take measures to ensure to his subjects that liberty to which they have the most incontrovertible right. The King of Denmark has always founded his glory and his grandeur upon the esteem and confidence of other people. It has been his rule, from the beginning of his reign, to testify to all the Powers, his friends, a conduct the most capable of convincing them of his pacific intentions, and of his desire to contribute to the general happiness of Europe. His proceedings have always been conformable to these principles, against which nothing can be alleged; he has not, till now, addressed himself, but to the Powers at war, to obtain a redress of his griefs; and he has never wanted moderation in his demands, nor acknowledgments when they have received the success they deserved: but the neutral navigation has been too often molested, and the most innocent commerce of his subjects too frequently troubled; so that the King finds himself obliged to take proper measures to assure to himself and his allies the safety of commerce and navigation, and the maintenance of the inseparable rights of liberty and independence. If the duties of neutrality are sacred, the law of nations has also its rights avowed by all impartial Powers, established by custom, and founded upon equity and reason. A nation independent and neutral, does not lose by the war of others the rights which she had before the war, because peace exists between her and all the belligerent Powers. Without receiving or being obliged to follow the laws of either of them, she is allowed to follow, in all places (contraband excepted), the traffic which she would have a right to do, if peace existed with all Europe, as it exists with her. The King pretends to nothing beyond what the neutrality allows him. This is his rule, and that of his people; and the King can not accord to the principle, that a Power at war has a right to interrupt the commerce of his subjects. He thinks it due to himself and his subjects, faithful observers of these rules, and to the Powers at war themselves, to declare to them the following principles, which he has always held,

<sup>1</sup>Translation. For the French text, see Appendix, p. 642.

and which he will always avow and maintain, in concert with the Empress of all the Russias, whose sentiments he finds entirely conformable with his own.

(1) That neutral vessels may navigate freely from port to port, and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

(3) That nothing is to be understood under the denominations of contraband, that is not expressly mentioned as such in the third article of his treaty of commerce with Great Britain, in the year 1670,<sup>1</sup> and the 26th and 27th articles of his treaty of commerce with France, in the year 1742;<sup>2</sup> and the King will equally maintain these rules with those Powers with whom he has no treaty.

(4) That he will look upon a blockaded port as one into which no vessel can enter without evident danger, on account of vessels of war stationed there, which form an effectual blockade.

(5) That these principles shall serve as rules for proceedings, and that justice shall be expeditiously rendered, after the rules of the sea, conformably to treaty and usage received.

His Majesty does not hesitate to declare, that he will maintain these principles with the honor of his flag, and the liberty and independence of the commerce and navigation of his subjects; and that it is for this purpose he has armed a part of his navy, although he is desirous to preserve, with all the Powers at war, not only a good understanding, but all the friendship which the neutrality can admit of. The King will never recede from these principles, unless he is forced to it: he knows the duties and the obligations; he respects them as he does his treaties and desires no other than to maintain them. His Majesty is persuaded, that the belligerent Powers will acknowledge the justice of his motives; that they will be as averse as himself to doing anything that may oppress the liberties of mankind, and that they will give their orders to their admiralty and to their officers, conformably to the principles above recited, which tend to the general happiness and interest of all Europe.

COPENHAGEN, *July 8, 1780.*

BERNSTORFF

<sup>1</sup>Treaty of July 11, 1670. Chalmers, *A Collection of Treaties between Great Britain and Other Powers*, vol. 1, p. 78.

<sup>2</sup>Treaty of August 23, 1742. Hennings, vol. 2, p. 121.

**Convention for an Armed Neutrality between Russia and Denmark and Norway, July 9, 1780<sup>1</sup>**

Whereas the commerce and navigation of neutral Powers is greatly injured by the present maritime war which has broken out between Great Britain, on the one part, and France and Spain, on the other part, Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, always solicitous to harmonize their dignity and their concern for the security and happiness of their subjects with the respect which they have so often manifested for the rights of nations in general, have found it necessary, in the present circumstances, to conform their conduct to these sentiments.

Her Majesty the Empress of Russia, in her declaration to the belligerent Powers, dated February 28, 1780,<sup>2</sup> has plainly stated, in the face of all Europe, the principles which derive from the primitive law of nations, and which Her said Majesty claims and adopts as a rule of her conduct in the present war. As this attention of Her Imperial Majesty, in watching over the common rights of nations, has been honored with the approbation of all neutral Powers, they have united in a cause, which concerns the defense of their most essential interests, and they have been impelled seriously to undertake an object of great importance both for the present time and for all time to come, as it tends to the establishment of a permanent and invariable system of the rights, prerogatives, limits, and engagements of neutrality.

His Majesty the King of Denmark and Norway, convinced of the justice of these principles, likewise established and claimed them in his declaration, in conformity with that of the Empress of Russia, which, on July 8, 1780,<sup>3</sup> he caused to be communicated to the three belligerent Powers; and in order to support these principles efficaciously, His Majesty has ordered a considerable part of his fleet to be fitted out. From these proceedings have arisen that harmony and unanimity with which Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, have thought it advisable, in consequence of their mutual friendship and reciprocal confidence, and the similarity of the interests of their subjects, solemnly to sanction in a formal convention the mutual engagements to be contracted with each other.

<sup>1</sup>Translation. For the French text, see Appendix, p. 644. Accepted by the States-General of the Netherlands, November 20, 1780 (*post*, p. 325), and act of accession signed at Petersburg, January 4, 1781 (*post*, p. 346).

<sup>2</sup>*Ante*, p. 273.

<sup>3</sup>*Ante*, p. 297.

To this end Their Imperial and Royal Majesties have chosen and appointed the following plenipotentiaries, viz.: Her Majesty the Empress of Russia has appointed Charles d'Osten, commonly called Baron Sacken, Privy Councilor of State, Knight of the Order of St. Anne, Minister Plenipotentiary from Her said Majesty to the Court of Denmark, etc., and His Majesty the King of Denmark and Norway has appointed Otton Count of Thott, Privy Councilor of State, Knight of the Order of the Elephant, etc., Joachim Otton Baron de Schack Rathlow, Privy Councilor of State, Knight of the Order of the Elephant, etc., John Henry Baron Eichstedt, Privy Councilor of State, Governor of His Royal Highness the Hereditary Prince of Denmark, Knight of the Order of the Elephant, etc., and Andrew Peter Count Bernstorff, Privy Councilor and Minister and Secretary of State for Foreign Affairs, President of the Royal German Chancery, Knight of the Order of the Elephant, etc., which said Ministers, after having exchanged their full powers, which were found to be in due form, have concluded and agreed to the following articles:

#### ARTICLE 1

That Their aforesaid Majesties are sincerely determined to maintain, constantly, the most perfect friendship and harmony with the different Powers at present engaged in war, and to observe the most scrupulous neutrality; and in consequence thereof they declare, that adhering to this determination, the prohibition of all contraband trade with the Powers at present at war, or with those who may hereafter be engaged therein, shall be strictly observed by their respective subjects.

#### ARTICLE 2

To avoid all errors and misunderstandings with regard to commodities which shall be deemed contraband, Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, do hereby declare, that they shall only acknowledge such articles to be contraband commodities as are included and mentioned in the treaties now subsisting between their respective Courts and the one or the other of the belligerent Powers.

Her Majesty the Empress of Russia conforms herself entirely in this respect to the Articles 10 and 11 of her treaty of commerce with

the Court of Great Britain,<sup>1</sup> and extends likewise the engagements of this treaty, which are founded upon the natural rights of nations, to the Courts of France and Spain; which said Courts, until the date of this present convention, have no treaty of commerce with her empire.

His Majesty the King of Denmark and Norway, on his part, conforms himself chiefly to Article 3 of his treaty of commerce with the Court of Great Britain,<sup>2</sup> and to Articles 26 and 27 of his treaty of commerce with France,<sup>3</sup> and extends also the engagements of this last-mentioned treaty to the Court of Spain, as His said Majesty has no treaty with the last-mentioned Power, which determines any conditions relative to this subject.

### ARTICLE 3

As by these means all contraband goods and commodities are determined and ascertained conformable to the treaties and express stipulations subsisting between the high contracting Parties and the belligerent Powers, and chiefly in the treaty between Russia and Great Britain of June 20, 1766,<sup>1</sup> as well as in that between Denmark and Great Britain, dated July 11, 1670,<sup>2</sup> and by that concluded between Denmark and France, on August 23, 1742;<sup>3</sup> the will and intention of Her Majesty the Empress of Russia, and of His Majesty the King of Denmark and Norway are, that all other commerce shall be and remain free.

Their said Majesties having already invoked in their declaration to the belligerent Powers, the general principles of natural law whence the liberty of commerce and navigation, and the rights of neutral nations derive, are resolved not to allow these rights to depend any longer upon an arbitrary interpretation, dictated by partial advantages and momentary interests; with this view, Their said Majesties have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

<sup>1</sup>See *post*, p. 329.

<sup>2</sup>Dumont, vol. 7, pt. 1, p. 132.

<sup>3</sup>Hennings, vol. 2, p. 121.



(3) That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

(4) That neutral vessels may be detained only for just cause and when the facts are perfectly evident; that they shall be adjudged without delay; that the procedure shall always be uniform, prompt, and legal; and that, in addition to the compensation granted to vessels which have suffered loss without having been at fault, complete satisfaction shall in each case be rendered for the insult to Their Majesties' flag.

#### ARTICLE 4

In order to obtain this end, and to protect the general commerce of their subjects, founded upon the principles laid down above, Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway have resolved to fit out, separately, a proportionate number of ships of the line and frigates; and the squadrons of these respective Powers shall repair to such latitudes, and shall serve as convoys to the trading ships of their respective subjects, wherever the commerce and navigation of each nation shall require it.

#### ARTICLE 5

In case any merchant ships belonging to subjects of one of the high contracting Powers should happen to be in a sea or latitude where no ships of war of their sovereign are stationed, and consequently should be unable to obtain any protection from the forces of their own nation, the commander of the ships of war of the other Power, upon being duly requested, shall immediately afford them all necessary assistance; and in this case, it is hereby stipulated, that the ships and frigates of the one Power shall always grant the necessary protection and assistance to the trading ships of the other Power; provided always, that those who shall claim such assistance or protection, shall not carry on any illicit trade which may be contrary to the laws of neutrality.

#### ARTICLE 6

The present convention shall not be retroactive, and consequently neither of the high contracting Powers shall take cognizance of any differences that may have arisen before its conclusion, unless the mat-

ter in litigation relates to acts of violence which are still continuing, and which may tend to oppress all neutral nations in Europe.

#### ARTICLE 7

If, notwithstanding the vigilant and amicable care of the two high contracting Powers, and the most exact observation of neutrality on their part, any Russian or Danish merchant ships should happen to be insulted, pillaged, or taken by the ships of war or privateers of one or the other of the belligerent Powers, the Minister of the offended party at the Court whose ships of war or privateers have been guilty of the said act shall make proper representations; he shall demand restitution of the seized merchant ship and shall insist upon a reasonable compensation for the damages, as well as upon a complete satisfaction for the insult offered to the flag of his sovereign. The Minister of the other high contracting Party shall second and support these representations in the most serious and efficacious manner, and thus they shall continue jointly and unanimously until their request is granted. But in case of a refusal, or any unreasonable delay from time to time to redress these grievances, Their aforesaid Majesties do hereby declare, that they will make use of reprisals towards that Power that refuses to do them justice, and will immediately unite, in the most efficacious means, to execute these just reprisals.

#### ARTICLE 8

In case one or the other of the two Powers, or both together should be disturbed, molested, or attacked, in consequence or in contempt of this convention, or for any cause whatever relative thereto, it is hereby stipulated and agreed, that the two Powers shall immediately act in concert for their mutual and reciprocal defense, and shall employ and unite all their forces to obtain a proper satisfaction, as well for the insult offered to their flag, as for the losses sustained by their respective subjects.

#### ARTICLE 9

This convention shall be in full force as long as this present war shall last; and the engagements contained therein shall serve as the basis for all future engagements and treaties that circumstances may cause to be concluded on the outbreak of fresh maritime wars which may hereafter unfortunately disturb the tranquillity of Europe. As

to the rest, all that has been stipulated and agreed upon, shall be considered as permanent and shall constitute the law to be applied in matters pertaining to commerce and navigation, as well as in cases involving the rights of neutral nations.

#### ARTICLE 10

As the aim and chief object of this convention is to secure general liberty of commerce and navigation, Their Majesties the Empress of Russia and the King of Denmark and Norway do hereby consent, and engage themselves reciprocally, to permit other neutral Powers to accede thereto; and by adopting the principles thereof these Powers so acceding shall share in the obligations as well as the advantages of the said convention.

#### ARTICLE 11

And in order that the belligerent Powers may have no pretext for pretending to be unacquainted with these engagements between Their said Majesties, the high contracting Parties do hereby promise, that they will separately acquaint the belligerent Powers with the measures they have taken, which are the less hostile as they are in no way detrimental to any other Power, but have only for object the security of the commerce and navigation of their respective subjects.

#### ARTICLE 12

The present convention shall be ratified by the two contracting Parties, and the ratifications shall be exchanged, in good and due form, within the term of six weeks from the date hereof, or sooner if possible. In virtue whereof we, whose names are hereunto written, being properly invested with full powers to that effect, have signed and sealed this present convention.

Done at Copenhagen, July 9, 1780.

[L. S.] CHARLES D'OSTEN, *called* SACKEN

[L. S.] O. THOTT

[L. S.] J. SCHACK RATHLOW

[L. S.] J. EICKSTEDT

[L. S.] A. P. BERNSTORFF

**Separate Articles Additional to the Convention for an Armed Neutrality between Russia and Denmark and Norway of July 9, 1780<sup>1</sup>**

ARTICLE 1

As Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway have always been equally interested in protecting the security and tranquillity of the Baltic Sea, and in keeping it free from the disturbances of the war and privateering—a system the more just and natural since all the Powers whose States border thereon enjoy the most profound peace,—they have mutually agreed to continue to maintain that it is a closed sea, incontestably such by its situation, on which all nations should and may navigate in peace and enjoy all the advantages of perfect tranquillity, and to adopt to this end among themselves measures capable of guaranteeing this sea and its coasts from all hostilities, piracy, and acts of violence. They will also maintain the tranquillity of the North Sea off their coasts, in so far as the circumstances and the interests of their States may render it necessary.

ARTICLE 2

Their said Majesties, desiring nothing more ardently than the restoration of peace based upon equitable principles, sentiments with which the love of humanity and the desire to prevent the further shedding of blood has inspired them since the beginning of the dissensions which now divide Europe, mutually promise to devote themselves to this same object, to consider the means which may accomplish this purpose, and when the opportunity presents itself, to seize it and to cooperate with sentiments of friendship and of confidence in so salutary an endeavor.

ARTICLE 3

Since the situation of the places makes very short the period during which the fleets of Her Imperial Majesty can operate outside of the Baltic for the protection of neutral commerce on the other seas, His Majesty the King of Denmark and Norway engages to receive in his ports and to treat on absolutely the same footing as his own, all Russian ships or vessels that may enter therein to pass the winter, to furnish them from her warehouses with equipment and provisions of

<sup>1</sup>Translation. For the French text, see Appendix. p. 649.

all kinds of which the crew may have need at the same prices at which such equipment and provisions are furnished to the vessels of Her Majesty; in a word, to make all necessary arrangements for the proper care of these vessels and their crews.

#### ARTICLE 4

If it should be found necessary to join the two squadrons, this will be done in accordance with the principles of perfect equality, and when one or more vessels happen to be together, that one of the commanding officers who has the higher rank, or in case they are both of the same rank, the one who is senior in that rank, shall take command of the war-ships and frigates of both nations. In general, an effort will be made to arrange the cruising, so far as possible without a formal junction, in such a way as to form a kind of chain and to give each other aid in case of need. As to salutes, they shall always be in conformity with the stipulations of the conventions between the two nations.

#### ARTICLE 5

At the more or less distant time when peace shall have been restored among the belligerent Powers, Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway shall use their best efforts with the maritime Powers in general to bring about the universal acceptance and recognition in all naval wars which may arise hereafter of the system of neutrality and the principles established in the present convention, forming the basis of a universal maritime code.

#### ARTICLE 6

As soon as this convention shall be ratified and the exchange of ratifications shall have been made, the high contracting Parties shall take care to communicate it, with the exception of the separate articles, in good faith and conjointly and with one accord, through their Ministers accredited to foreign Courts, and specifically to those which are at present at war. In order that they may proceed uniformly to this end, there is attached hereto the form of the instrument which the respective Ministers shall transmit on this occasion.

These separate articles shall be considered and regarded as forming a part of the convention itself and shall have the same force and

effect as though they were inserted word for word in the said convention concluded on the same day between the high contracting Parties. They shall be ratified in the same manner and ratifications shall be exchanged at the same time.

In faith whereof we, the undersigned, by virtue of our full powers, have signed them and affixed thereto the seals of our arms.

Done at Copenhagen, the 9th day of the month of July, in the year of grace one thousand seven hundred and eighty.

[L. S.] CHARLES D'OSTEN, *called* SACKEN

[L. S.] O. THOTT

[L. S.] O. SCHACK RATHLOW

[L. S.] J. H. EICKSTEDT

[L. S.] A. P. BERNSTORFF

#### **Declaration of the King of Sweden to the Courts of London, Versailles and Madrid, July 21, 1780<sup>1</sup>**

Ever since the beginning of the present war, the King has taken particular care to manifest his intentions to all Europe. He imposed unto himself the law of a perfect neutrality; he fulfilled all the duties thereof, with the most scrupulous exactitude; and in consequence thereof, he thought himself entitled to all the prerogatives naturally appertaining to the qualification of a sovereign perfectly neuter. But notwithstanding this, his commercial subjects have been obliged to claim his protection, and His Majesty has found himself under the necessity to grant it to them.

To effect this, the King ordered last year a certain number of men of war to be fitted out. He employed a part thereof on the coasts of his kingdom, and the rest served as convoys for the Swedish merchant ships in the different seas which the commerce of his subjects required them to navigate. He acquainted the several belligerent Powers with these measures and was preparing to continue the same during the course of this year, when other Courts, who had likewise adopted a perfect neutrality, communicated their sentiments unto him,

<sup>1</sup>*Annual Register*, 1780, p. 353. For a French text, see Appendix, p. 651.

which the King found entirely conformable to his own, and tending to the same object.

The Empress of Russia caused a declaration to be delivered to the Courts of London, Versailles, and Madrid, in which she acquainted them of her resolution to protect the commerce of her subjects, and to defend the universal rights and prerogatives of neutral nations. This declaration was founded upon such just principles of the law of nations and the subsisting treaties that it was impossible to call them into question. The King found them entirely concordant with his own cause, and with the treaty concluded in the year 1666,<sup>1</sup> between Sweden and France; and His Majesty could not forbear to acknowledge and to adopt the same principles, not only with regard to those Powers, with whom the said treaties are in force, but also with regard to such others as are already engaged in the present war, or may be involved therein hereafter, and with whom the King has no treaties to reclaim. It is the universal law, and when there are no particular engagements existing, it becomes obligatory upon all nations.

In consequence thereof, the King declares hereby again, "That he will observe the same neutrality, and with the same exactitude, as he has hitherto done. He will enjoin all his subjects, under rigorous pains, not to act in any manner whatever contrary to the duties which a strict neutrality imposes unto them; but he will effectually protect their lawful commerce, by all possible means, whenever they carry on the same, conformably to the principles here above mentioned.

### Reply of the Court of London to the Danish Declaration, July 25, 1780<sup>2</sup>

During the whole course of the defensive war which the King has been waging against France and Spain, His Majesty has constantly respected the rights of all friendly and neutral Powers, in accordance with the terms of his different treaties with them and with the clearest

<sup>1</sup>Treaty of February 16, 1666. Dumont, vol. 6, pt. 3, p. 83.

<sup>2</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 182. Presented by Mr. Eden on August 7 of the same year.

and most generally recognized principles of the law of nations, the common law of those nations which have no special conventions.

Such conventions have long existed between Great Britain and Denmark. The flag of His Danish Majesty and the commerce of his subjects have been respected and shall continue so to be, in conformity with the treaties existing between the two nations, which are the foundation and the support of that friendship which has united them for more than a century. Their mutual rights and duties are clearly set forth in these solemn engagements, which would become worthless if they could be changed otherwise than by mutual agreement. They remain in full force at the present time and are equally binding upon both contracting Parties; they constitute an inviolable law for both. The King has followed and will continue to follow it as such with that spirit of equity which has guided all his acts, and with a sincere friendship for the King of Denmark, in the expectation of finding and in the conviction that he will always find in His Danish Majesty similar sentiments and a like conduct.

STORMONT

LONDON, *July 25, 1780.*

**Reply of the Court of France to the Danish Declaration, July 27, 1780<sup>1</sup>**

The King's reply to the last declaration of the Empress of Russia made known how well calculated are the principles of His Majesty with regard to the freedom of the seas to bring about security and tranquillity for neutral vessels. By his sincere commendation of the views and measures of the Empress of Russia, His Majesty announced in advance to the Powers which this Princess invited to make common cause with her what they might expect from his justice and his love for the general good.

Since the King of Denmark has now made known his determination to uphold a system, the establishment of which is regarded by His Majesty as the greatest benefit that the present war has been able to bring about for Europe, the King hastens to inform His Danish

<sup>1</sup>Translation. French text, *ibid.*, p. 180.



Majesty of his entire approval of the content of the declaration which this Prince has had transmitted to him. The wise and clear laws, whose execution are demanded by the King of Denmark, are in full accord with the provisions and orders of His Majesty at the very beginning of this war, looking to the safeguarding of neutral vessels from all the injuries, to which, according to the law of nations, they should not be exposed. His Majesty recently issued additional orders to the officers of his navy and to privateers carrying his flag not to disturb in any manner neutral navigation; he did not need any instigation to order that Danish vessels in particular should be treated as belonging to a friendly Power which respected the laws of the sea and should enjoy all the advantages of neutrality. His Majesty hopes that the King of Denmark, pursuant to the principles contained in his declaration, will likewise be good enough to reiterate the order to his subjects to conduct themselves in every respect in conformity with the usages which a wise foresight has established to prevent abuse of freedom of navigation. The more favorable a belligerent Power shows itself to be toward a neutral nation, the more scrupulously should the latter keep within the limits prescribed by the law of nations.

His Danish Majesty, by joining with the Empress of Russia and the other Powers that shall embrace the same cause, will aid in establishing for the future the status of neutral vessels, in order that the calamities that follow in the wake of war may be diminished and that the whole of Europe may no longer be made a victim in quarrels which may arise between one or more of the nations of that continent.

The King desires that His Danish Majesty shall reap the full benefit that he expects from his prudence and requests him to rest assured that no wrong will be perpetrated by his subjects on Danish navigators, or, if such a thing should happen, that reparation shall be made with all possible celerity.

His Majesty expresses his most sincere hope that the cooperation of the Powers, which are equally interested in the freedom of the seas, may render immutable laws whose equity he recognizes authoritatively. He is especially pleased to assure the King of Denmark on this occasion of his never-ending desire that the Danish nation shall enjoy the benefit of the sentiments of friendship and confidence which unite the two Courts.

VERSAILLES, *July 27, 1780.*

**Convention for an Armed Neutrality between Russia and Sweden,  
August 1, 1780<sup>1</sup>**

Whereas the commerce and navigation of neutral Powers is greatly injured by the present maritime war which has broken out between Great Britain, on the one part, and France and Spain, on the other part, His Majesty the King of Sweden and Her Majesty the Empress of all the Russias, always solicitous to harmonize their dignity and their concern for the security and happiness of their subjects with the respect which they have so often manifested for the rights of peoples in general, have found it necessary, in the present circumstances, to conform their conduct to these sentiments.

Her Imperial Majesty of all the Russias, in her declaration to the belligerent Powers, dated February 28, 1780,<sup>2</sup> has plainly stated, in the face of all Europe, the principles which derive from the primitive law of nations, and which Her Majesty claims and adopts as a rule of her conduct in the present war. As this attention of Her Imperial Majesty, in watching over the common rights of nations, has been honored with the approbation of all neutral Powers, they have united in a cause which concerns the defense of their most essential interests, and they have been impelled seriously to undertake an object of great importance both for the present time and for all time to come, as it tends to the establishment of a permanent and invariable system of the rights, prerogatives, limits, and engagements of neutrality.

His Majesty the King of Sweden, convinced of the justice of these principles, likewise established and claimed them in the declaration, in conformity with that of the Empress of Russia, which on July 21, 1780,<sup>3</sup> he caused to be communicated to the three belligerent Powers; and in order to sustain these principles, His Swedish Majesty has ordered a considerable part of his fleet to be fitted out. From these proceedings have arisen that harmony and unanimity in which His Majesty the King of Sweden and Her Majesty the Empress of all the Russias have thought it advisable, in consequence of their mutual friendship and reciprocal confidence and the similarity of the interests of their subjects, solemnly to sanction in a formal convention the mutual engagements to be contracted with each other. To this end

<sup>1</sup>Translation. For the French text, see Appendix, p. 652. Accepted by the States-General of the Netherlands on November 20, 1780 (*post*, p. 325), and act of accession signed at Petersburg on January 4, 1781 (*post*, p. 346).

<sup>2</sup>*Ante*, p. 273.

<sup>3</sup>*Ante*, p. 307.

Their said Majesties have chosen and named as their plenipotentiaries, to wit:

His Majesty the King of Sweden, Frederic Baron de Nolken, his Envoy Extraordinary at the Court of Russia, Chamberlain, Commander of the Royal Order of the Polar Star and Knight of the Orders of the Sword and of St. John; and Her Imperial Majesty of all the Russias, Count Nikita Panin, her present Privy Councilor, Senator, present Chamberlain and Knight of the Orders of St. Andrew, St. Alexander-Newsky and St. Anne, and John Count d'Ostermann, her Vice Chancellor, Privy Councilor and Knight of the Orders of St. Alexander-Newsky and St. Anne; who, after having exchanged their full powers, found in good and due form, have agreed and concluded the following articles:

#### ARTICLE 1

That Their aforesaid Majesties are sincerely determined to maintain, constantly, the most perfect friendship and harmony with the different Powers at present engaged in war, and to observe the most scrupulous neutrality; and in consequence thereof they declare, that adhering to this determination, the prohibition of all contraband trade with the Powers at present at war, or with those who may hereafter be engaged therein, shall be strictly observed by their respective subjects.

#### ARTICLE 2

To avoid all errors and misunderstandings with regard to commodities which shall be deemed contraband, His Majesty the King of Sweden and Her Majesty the Empress of all the Russias do hereby declare that they shall only acknowledge such articles to be contraband commodities as are included and mentioned in the treaties now subsisting between their respective Courts and the one or the other of the belligerent Powers. His Majesty the King of Sweden refers specifically in this regard to Article 11 of his treaty of commerce with Great Britain<sup>1</sup> and to the terms of the preliminary treaty of commerce concluded between the two Crowns of Sweden and France in 1741<sup>2</sup>; and although in this latter the definition of contraband is not

<sup>1</sup>Treaty of October 21, 1661. *Collection of Treatys* (London, 1732), vol. 3, p. 240. For Article 11, see *post*, p. 620n.

<sup>2</sup>Treaty of April 25, 1741. *Wenck*, vol. 2, p. 5.

specifically set forth, nevertheless as the two kingdoms stipulated therein to regard each other as *gens amicissima*, and since, moreover, Sweden has reserved to itself the benefits enjoyed in France, as of ancient right, by the Hanseatic towns, benefits solemnly confirmed by the treaties of Utrecht, the King has nothing to add thereto. As regards Spain, since His Majesty has no special treaty with that Crown, he extends to it the obligations of the aforesaid treaties, which are founded entirely on natural law. Her Imperial Majesty of all the Russias, on her part, refers to Articles 10 and 11 of her treaty of commerce with Great Britain.<sup>1</sup> She extends the obligations thereof, which are founded entirely on natural law, to the Crowns of France and Spain, which up to the present time have not bound themselves with her Empire by any formal engagement relating purely to commerce.

### ARTICLE 3

As by these means all contraband goods and commodities are determined and ascertained conformably to the treaties and express stipulations subsisting between the high contracting Parties and the belligerent Powers, and chiefly in the treaty of commerce, concluded between Sweden and Great Britain on October 21, 1661, and the preliminary treaty of commerce between Sweden and France, concluded in 1741, as well as the treaty of commerce concluded between Russia and Great Britain on June 20, 1766. The will and intention of His Majesty the King of Sweden and Her Imperial Majesty of all the Russias are that all other commerce shall be and remain free.

Their said Majesties having already invoked in their declaration to the belligerent Powers the general principles of neutral law, whence the liberty of commerce and navigation and the rights of neutral nations derive, are resolved not to allow these rights to depend any longer upon an arbitrary interpretation, dictated by partial advantages and momentary interests. With this view, Their said Majesties have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

<sup>1</sup>Treaty of June 20, 1766. See *post*, pp. 342-3.

(3) That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

(4) That neutral vessels may be detained only for just cause and when the facts are perfectly evident; that they shall be adjudged without delay; that the procedure shall always be uniform, prompt, and legal; and that, in addition to the compensation granted to vessels which have suffered loss without having been at fault, complete satisfaction shall in each case be rendered for the insult to Their Majesties' flag.

#### ARTICLE 4

In order to obtain this end and to protect the general commerce of their subjects, founded upon the principles laid down above, His Majesty the King of Sweden and Her Imperial Majesty of all the Russias have resolved to fit out separately a proportionate number of ships of the line and frigates; and the squadrons of these respective Powers shall repair to such latitudes, and shall serve as convoys to the trading ships of their respective subjects, wherever the commerce and navigation of each nation shall require it.

#### ARTICLE 5

In case any merchant ships belonging to subjects of one of the high contracting Powers should happen to be in a sea or latitude where no ships of war of their sovereigns are stationed, and consequently should be unable to obtain any protection from the forces of their own nation, the commander of the ships of war of the other Power, upon being duly requested, shall immediately afford them all necessary assistance; and in this case, it is hereby stipulated that the ships and frigates of the one Power shall always grant the necessary protection and assistance to the trading ships of the other Power; provided always, that those who shall claim such assistance or protection shall not carry on any illicit trade which may be contrary to the laws of neutrality.

#### ARTICLE 6

The present convention shall not be retroactive, and consequently neither of the high contracting Powers shall take cognizance of any differences that may have arisen before its conclusion, unless the mat-

ter in litigation relates to acts of violence which are still continuing, and which may tend to oppress all neutral nations in Europe.

#### ARTICLE 7

If, notwithstanding the vigilant and amicable care of the two high contracting Powers, and the most exact observation of neutrality on their part, any merchant ships of His Majesty the King of Sweden or of Her Imperial Majesty of all the Russias should happen to be insulted, pillaged, or taken by the ships of war or privateers of one or the other of the belligerent Powers, the Minister of the offended party at the Court whose ships of war or privateers have been guilty of the said act shall make proper representations; he shall demand restitution of the seized merchant ship, and shall insist upon reasonable compensation for the damages, as well as upon complete satisfaction for the insult offered to the flag of his sovereign. The Minister of the other high contracting Party shall second and support these representations in the most serious and efficacious manner, and thus they shall continue jointly and unanimously until their request is granted. But in case of a refusal, or any unreasonable delay from time to time to redress these grievances, their aforesaid Majesties do hereby declare that they will make use of reprisals towards that Power that refuses to do them justice, and will immediately unite, in the most efficacious means, to execute these just reprisals.

#### ARTICLE 8

In case one or the other of the two Powers, or both together, should be disturbed, molested, or attacked, in consequence or in contempt of this convention, or for any cause whatever relative thereto, it is hereby stipulated and agreed, that the two Powers shall immediately act in concert for their mutual and reciprocal defense, and shall employ and unite all their forces to obtain a proper satisfaction, as well for the insult to their flag, as for the losses sustained by their respective subjects.

#### ARTICLE 9

This convention shall be in full force as long as this present war shall last; and the engagements contained therein shall serve as the basis for all future engagements and treaties that circumstances may cause to be concluded on the outbreak of fresh maritime wars which

may hereafter unfortunately disturb the tranquillity of Europe. As to the rest, all that has been stipulated and agreed upon, shall be considered as permanent and shall constitute the law to be applied in matters pertaining to commerce and navigation, as well as in cases involving the rights of neutral nations.

#### ARTICLE 10

As the aim and chief object of this convention is to secure general liberty of commerce and navigation, His Majesty the King of Sweden and Her Imperial Majesty of all the Russias do hereby consent and engage themselves reciprocally to permit other neutral Powers to accede thereto; and by adopting the principles thereof, these Powers so acceding shall share in the obligations as well as the advantages of the said convention.

#### ARTICLE 11

And in order that the belligerent Powers may have no pretext for pretending to be unacquainted with these engagements between Their said Majesties, the high contracting Parties do hereby promise that they will separately acquaint the belligerent Powers with the measures they have taken, which are the less hostile as they are in no way detrimental to any other Power, but have only for object the security of the commerce and navigation of their respective subjects.

#### ARTICLE 12

The present convention shall be ratified by the two contracting Parties, and the ratifications shall be exchanged in good and due form, within the term of six weeks from the date hereof, or sooner if possible. In virtue whereof we, whose names are hereunto written, being properly invested with full powers to that effect, have signed and sealed this present convention.

Done at St. Petersburg, July 21/August 1, in the year of grace one thousand seven hundred and eighty.

[L. S.] FREDERIC NOLKEN

[L. S.] COUNT N. PANIN

[L. S.] COUNT JOHN D'OSTERMANN

**Separate Articles Additional to the Convention for an Armed Neutrality between Russia and Sweden of August 1, 1780<sup>1</sup>**

[These six articles are word for word of the same tenor as those between Russia and Denmark,<sup>2</sup> except that to Article 3 between Russia and Sweden there is added:] Her Imperial Majesty undertakes the same obligations with respect to His Majesty the King of Sweden, and her commanding officers in the ports of the Baltic Sea shall consequently have orders to follow the same procedure in the case of Swedish war-ships and all Swedish vessels, when they are so requested.

**Reply of the Court of London to the Swedish Declaration,  
August 3, 1780<sup>3</sup>**

Throughout the entire course of the war in which Great Britain finds herself engaged as a result of the aggression of France and Spain, the King has invariably followed those principles of justice and equity which guide all his actions. He has faithfully fulfilled all his engagements with respect to friendly and neutral Powers. The flags of these Powers and the commerce of their subjects have been respected in conformity with the terms of these engagements.

Those existing between Great Britain and Sweden are clear and formal and furnish a direct reply to the declaration which Baron Nolken has transmitted by the express orders of the Court.

The 12th article of the treaty of 1661<sup>4</sup> fixing the form of certificate with which vessels must be provided gives the following reason therefor:

Ne vero libera ejusmodi navigatio, aut transitus foederati unius, ejusque subditorum ac incolarum, durante bello alterius

<sup>1</sup>Translation. For the French text, see Appendix, p. 656.

<sup>2</sup>*Ante*, p. 305.

<sup>3</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 188.

<sup>4</sup>Treaty of October 21, 1661. *Collection of Treatys*, vol. 3, p. 240.



foederati, terra marive cum aliis gentibus, fraudi sit alteri confoederato, mercesque et bona hostilia occultari possint.<sup>1</sup>

The same article contains a precise and formal stipulation, namely:

Si hostis bona in confoederati navigio reperiantur, quod ad hostem pertinet, praedae solummodo cedat, quod vero ad confoederatum illico restituatur.<sup>2</sup>

The treaty of 1666<sup>3</sup> prescribes the same certificate and gives the same reasons therefor.

Such are the engagements binding the two nations, which can not be violated without impairing the friendship which has so long existed between them and of which these engagements are the foundation and support.

Treaties can be changed only by mutual agreement of the contracting Parties, and as long as they are in force, they are equally binding upon both.

The King shall, therefore, follow his engagements with Sweden as a sacred and inviolable law, and he shall maintain it as such.

### Reply of the Court of France to the Swedish Declaration, August 4, 1780<sup>4</sup>

The King has constantly desired that neutral Powers should receive no injury in the war in which His Majesty is engaged. His orders have ensured to the vessels belonging to these Powers enjoyment of all the freedom allowed them by the laws of the sea, and if

<sup>1</sup>TRANSLATION: Lest the free navigation or intercourse of one of the confederates and his subjects and inhabitants by land or sea, with other nations, while the other confederate is at war, should be carried on to the prejudice of the other confederate, and lest the enemy's goods and merchandize should be concealed. *Collection of Treatys*, p. 247.

<sup>2</sup>TRANSLATION: If the goods of the enemy are found in the ships of the confederate, that part only which belongs to the enemy shall be made prize, and the other which belongs to the confederate shall be immediately restored. *Ibid.* p. 250.

<sup>3</sup>Treaty of February 16, 1666. Dumont, vol. 6, pt. 3, p. 83.

<sup>4</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 186.

some individual navigators have had cause for complaint in that they have suffered by act of subjects of His Majesty, they have received prompt and equitable justice.

His Majesty has seen with satisfaction in the declaration transmitted to him in the name of the King of Sweden<sup>1</sup> that the intention of this Prince was to continue to protect the navigation of his subjects against all violence, that His Swedish Majesty had even resolved to take measures in concert with other Courts, and particularly with the Empress of Russia, for the more effectual attainment of this end. The King can only express the hope that the cooperation of His Swedish Majesty with these Powers may bring about the good results which they intend, that the sea may be free, in conformity with the law of nations and with treaties, which are recognized as being merely an explanation of that law; that, finally, all nations which are not taking part in the war may not suffer from its evils.

His Majesty has repeated to the officers of his navy and to the privateers that carry his flag, orders in accord with the principles upon which the security and tranquillity of all neutral vessels must rest. With still more reason the subjects of the King of Sweden must be assured that they will suffer no mishap at the hands of the subjects of His Most Christian Majesty, since no Frenchman is ignorant of the alliance and friendship which have long existed between the two Crowns.

Inasmuch as the precautions taken by His Swedish Majesty will keep Swedish navigators within the bounds of the strictest neutrality, this will be a further reason for them to insist upon the execution of the laws of which their master shows himself to be the zealous protector, laws which the King ardently hopes to see adopted by the unanimous cooperation of all the Powers, so that none may have to suffer from the war if the sovereign takes no part therein, when he shall have conformed to the rules prescribed for the prevention of the abuse of the neutral flag.

VERSAILLES, *August 4, 1780.*

<sup>1</sup>*Ante*, p. 307.

**Reply of the Court of Spain to the Danish Declaration, August 7, 1780<sup>1</sup>**

His Catholic Majesty, in the reply which he had made to the declaration that the Empress of Russia presented to him through her Minister residing at his Court, in all respects similar to that which by order of the said sovereign was presented to the other belligerent Courts, declared in the most positive terms that his views with regard to the rights of neutral nations in their navigation and commerce were entirely in accord with those of Her Imperial Majesty, and the orders immediately given to observe with respect to vessels under the Russian flag a course of conduct and a manner of treatment in conformity with the principles which the said Princess declared it to be her desire to follow and uphold, are a proof of the sincerity and the good faith with which the King is acting; and so is the promptness with which he ordered the same provisions in favor of Dutch vessels, as soon as the States-General declared their adhesion to the system of the Court of Russia. Now that the King of Denmark (by a declaration signed by his Minister of State on July 8 last<sup>2</sup>) has formally announced that his principles with respect to the rights and freedom which neutral nations should enjoy in their lawful commerce in time of war are those which the Court of St. Petersburg has adopted and which His Majesty is likewise determined to uphold in favor of the Danish flag and the free navigation of his subjects, His Catholic Majesty does not for a moment hesitate to accept this explanation of His Danish Majesty and to declare that at the very outset he gave orders that the same rules be observed with regard to Danish vessels as with Russian and Dutch ships. Consequently the said vessels shall not be arrested by the commanders of his royal fleets, nor by the captains of privateers that may encounter them at sea, although they may have on board effects belonging to the enemies of Spain, provided they be not such effects as have been declared by general treaties contraband in time of war, and these vessels shall be shown every possible consideration in the matter of the notification and observance of the declaration of March 13 of the present year,<sup>3</sup> pertaining to the blockade of Gibraltar, of which Denmark was notified, it being understood that those attempting to sail to that port shall be exposed to the

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 183.

<sup>2</sup>*Ante*, p. 297.

<sup>3</sup>Martens, *ibid.*, p. 92.

peril set forth in Article 4 of the said declaration. But the Catholic King, in following this line of action, can not doubt that Denmark and the other Powers that have determined or shall determine to uphold their rights and to defend the freedom of their flags shall be likewise impartial in appraising and in responding in kind to the conduct adopted toward them by the Powers at war, as they are obliged to do by their own system and the just maxims which have been so openly adopted.

ST. ILDEPHONSO, *August 7, 1780.*

COUNT DE FLORIDA-BLANCA

**Declaration of September 7, 1780, by which His Danish Majesty accedes to the Convention for an Armed Neutrality between Russia and Sweden<sup>1</sup>**

Christian VII, by the grace of God, King of Denmark, Norway, the Vandals and the Goths, Duke of Schleswig-Holstein, Stormarn, Ditmarsen and Oldenburg, etc., etc., make known that, having been invited to accede as a principal contracting Party to the convention concluded and ratified on July 21/August 1, 1780,<sup>2</sup> at St Petersburg, between Her Majesty the Empress of all the Russias and His Majesty the King of Sweden, similar in all respects to the convention concluded between us and Her said Imperial Majesty, and signed at Copenhagen on July 9, 1780.<sup>3</sup> We formally certify by this declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form as a contracting Party to the aforesaid convention, and we bind ourself and our successors by all the stipulations contained in its clauses and articles, as well as in the six separate articles thereto annexed, and we likewise accede entirely to the form and tenor thereof. We understand that Her Majesty the Empress of all the

<sup>1</sup>Translation. French text, *ibid.*, p. 207.

<sup>2</sup>*Ante*, p. 311.

<sup>3</sup>*Ante*, p. 299.

Russias and His Majesty the King of Sweden will likewise declare by a formal instrument the receipt and acceptance of this our declaration and will recognize us as a principal contracting Party with respect to the said convention; and as His Majesty the King of Sweden, having been invited likewise, has also acceded in the same manner and in the same sense to the exactly similar convention concluded between us and Her Majesty the Empress of all the Russias, and signed at Copenhagen on July 9, 1780. We solemnly declare that we accept his accession and that we recognize His Swedish Majesty as a principal contracting Party of that convention and of the six separate articles thereto annexed. In faith of which we have signed the present act of accession and of acceptance with our own hand and have thereto affixed the great seal of our Crown.

Done and given at our Castle of Fredensburg, this 7th day of the month of July [September?], in the year of grace one thousand seven hundred and eighty, and of our reign the fifteenth.

CHRISTIAN R.

A. v. BERNSTORFF

**Declaration of September 9, 1780, by which His Swedish Majesty accedes to the Convention for an Armed Neutrality between Russia and Denmark and Norway<sup>1</sup>**

Gustavus, by the grace of God, King of Sweden, of the Goths and the Vandals, etc., etc., etc., heir to Norway, Duke of Schleswig-Holstein, of Stormarn and of Ditmarsen, Count of Oldenburg and of Delmenhorst, etc., etc., make known that, having been invited to accede, as a principal contracting Party, to the convention concluded and ratified on July 9 of the present year at Copenhagen, between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark,<sup>2</sup> in all respects similar to the convention concluded between Her said Imperial Majesty, signed at Petersburg on July 21/August 1 of the present year and ratified by us on the 9th of Sep-

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 205.

<sup>2</sup>*Ante*, p. 299.

tember following,<sup>1</sup> we formally certify by this present declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form, as a principal contracting Party, to the said convention; and we bind ourself and our successors by all the stipulations contained in the clauses and separate articles thereto annexed, and we likewise accede entirely to the form and tenor thereof. We understand that Her Imperial Majesty of all the Russias and His Majesty the King of Denmark will likewise declare, by a formal instrument, that they have received and accepted this our declaration and will recognize us as a principal contracting Party with regard to the said convention; and as His Majesty the King of Denmark, having been invited likewise, has also acceded in the same manner and in the same sense to the exactly similar convention concluded between us and Her Majesty the Empress of all the Russias, and signed at St. Petersburg on July 21/ August 1 of the present year, we solemnly declare that we accept his accession and that we recognize His Danish Majesty as a principal contracting Party of that convention and of six separate articles thereto annexed. In faith whereof we have signed this present act of accession with our own hand and have affixed thereto our royal seal.

Done and given at Spa, September 9, 1780.

GUSTAVUS

U. G. FRANC

**Resolution of the Continental Congress of the United States acceding to the Principles contained in the Declaration of the Empress of Russia, October 5, 1780<sup>2</sup>**

Congress took into consideration the report of the committee on the motion relating to the propositions of the Empress of Russia; and thereupon came to the following resolutions:

<sup>1</sup>*Ante*, p. 311.

<sup>2</sup>*Journals of the Continental Congress*, vol. 18, p. 905; Wharton, *Diplomatic Correspondence of the American Revolution*, vol. 4, p. 80.

Her Imperial Majesty of all the Russias, attentive to the freedom of commerce, and the rights of nations, in her declaration to the belligerent and neutral Powers, having proposed regulations, founded upon principles of justice, equity, and moderation, of which Their Most Christian and Catholic Majesties and most of the neutral maritime Powers of Europe, have declared their approbation ;

Congress, willing to testify their regard to the rights of commerce, and their respect for the sovereign, who hath proposed and the Powers that have approved the said regulations :

*Resolved*, That the Board of Admiralty prepare and report instructions for the commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias, on the rights of neutral vessels :

That the Ministers Plenipotentiary from the United States, if invited thereto, be and hereby are respectively empowered to accede to such regulations, conformable to the spirit of the said declaration, as may be agreed upon by the Congress expected to assemble in pursuance of the invitation of Her Imperial Majesty.

*Ordered*, That copies of the above resolutions be transmitted to the respective Ministers of the United States, at foreign Courts, and to the honorable the Minister Plenipotentiary of France.

**Russian Memorandum to the Belligerent Powers notifying them of the Accession of Denmark and Norway and Sweden to the System of Armed Neutrality, November 7, 1780<sup>1</sup>**

The undersigned, Envoy, etc., has received instructions from his Court to communicate to the Court of . . . a convention drawn up and signed at St. Petersburg on June 28/July 9 between Her Imperial Majesty of all the Russias, his sovereign, and His Majesty the King of Denmark and Norway, July 21/August 1 between Her Imperial Majesty and His Majesty the King of Sweden, which has for its sole and only object the maintenance of the rights and liberties belonging to every neutral nation. Anxious to perform his duty, he

<sup>1</sup>Translation. For the French text, see Appendix, p. 657.

requests the Minister of His Majesty . . . kindly to bring it to the knowledge of the King. His Majesty will find in all the clauses and articles of this treaty an expression of the principles of perfect impartiality and neutrality, as well as of the sentiments of justice and equity which constantly guide the Empress, his sovereign, and which have decided her to adopt measures calculated to protect her subjects from the losses, vexations, and dangers, to which they, their commerce and their navigation might be exposed as the unfortunate result of the naval war which is disturbing the tranquillity of Europe.

The Empress is pleased to believe from the friendship and the spirit of justice with which His Majesty . . . is animated that he will recognize the equity and peaceful intent of this convention, and that he will ensure the execution of the orders which he has had sent to all his officers and commanders of his war-ships, as well as to his ship-owners, to respect the rights and liberties of neutral nations, just as Her Imperial Majesty has provided measures to prevent her subjects from engaging in illicit commerce to the detriment of either of the Powers at war.

**Resolution of the States-General of the Netherlands regarding  
Their Accession to the System of Armed Neutrality, November  
20, 1780<sup>1</sup>**

Consideration having been given to a communication from Messrs. van Wassenaar and van Heeckeren, Ministers Plenipotentiary of the States-General of the Netherlands to the Court of Russia, written at St. Petersburg on September 15, last, and received here on October 2, following, giving an account of their conference with Count Panin and Vice Chancellor Count van Ostermann upon the subject of their commission, and accompanied by a copy of a convention and some separate articles, together with a draft of the accession in the form in which the States-General shall sign it, all of which is referred to at length in the above-mentioned communication and in the report of October 2 last:

<sup>1</sup>Translation. Dutch text, Martens, *Recueil*, 2d ed., vol. 3, p. 211.



It stands approved and agreed that the States-General's Ministers Plenipotentiary at the Court of St. Petersburg shall be directed and authorized, and by this resolution they are authorized, in the name of the States-General of the Netherlands to accede to the twofold convention of that Court with Their Majesties the Kings of Denmark and of Sweden, concluded on July 9 and July 21 at Copenhagen and St. Petersburg respectively,<sup>1</sup> and to accept, on the part of the States-General of the Netherlands, the separate articles thereof and the obligations therein stated, for the enjoyment of the advantage thereby contracted, as if the conventions had been entered into and concluded, word for word, between the States-General of the Netherlands and each of the contracting Powers as principal contracting Parties, with reasons established this day in the declarations of the States-General addressed to the belligerent Powers; and within six weeks of the date of this resolution of the States-General, to conform fully to and solemnly to accept that which Her Imperial Russian Majesty and the Kings of Sweden and Denmark have stipulated in their declarations to the belligerent Powers, and with regard to contraband merchandise, to conform to that which has been stipulated in the treaties concluded between the States-General and the belligerent Powers, and more especially in Article 6 of their maritime treaty with Spain of December 17, 1650,<sup>2</sup> in Article 3 of their maritime treaty with Great Britain of December 1, 1674,<sup>3</sup> and Article 16 of the commercial, naval and maritime treaty with France, of December 21, 1739,<sup>4</sup> concluded for the period of twenty-five years. The States-General consider the disposition and the determination of contraband merchandise given thereby as perfectly founded upon the law of nations, and accept them unreservedly; and they confer the further authorization upon the above-mentioned Ministers Plenipotentiary to draft for Her Imperial Russian Majesty and Their Royal Majesties, acts regarding the above-mentioned accession and acceptance, embodying in the most friendly tone the fullest obligations, and to transmit the said acts to the above-mentioned Courts, with the request that the necessary acts of acceptance of the above-mentioned accession on the part of the States-General be delivered to them in turn.

<sup>1</sup>*Ante*, pp. 299, 311.

<sup>2</sup>Dumont, vol. 6, pt. 1, p. 570.

<sup>3</sup>*Ibid.*, vol. 7, pt. 1, p. 282.

<sup>4</sup>Wenck, vol. 1, p. 414.

In consequence of the above-mentioned resolution regarding accession to the above-mentioned convention it is further resolved that within the above-mentioned period of six weeks from the date of this resolution of the States-General, declarations as adopted by the above-mentioned Courts, conformable to the style of those of Her Imperial Russian Majesty and of Their Royal Majesties of Sweden and of Denmark regarding the protection which the States-General intend to extend to the commerce and navigation of their citizens, shall be sent to the Courts of Great Britain, France and Spain. These declarations shall define the character of contraband merchandise and repeat the principles construed in the declaration of Her Imperial Russian Majesty and accepted by the States-General. The necessary orders shall be sent to Mr. Lestevenon van Berkenrode, the States-General's Ambassador at the Court of France, and to Counts van Welderen and van Rechteren, Envoys Extraordinary and Plenipotentiary at the Courts of Great Britain and of Spain respectively, informing them at once of the time when the above-mentioned declaration shall be communicated to each of the belligerent Powers. A copy of the declaration itself shall be sent to the above-mentioned Ministers Plenipotentiary, to acquaint Her Imperial Russian Majesty's Ministry thereof; a copy of the declaration shall be left with the said Ministry, and other copies sent to Messrs. van Lynden and Bosc de la Calmette, the States-General's Envoys Extraordinary at the Courts of Sweden and Denmark; other copies still shall be sent to Mr. Smissart, the States-General's Minister at the Court of Portugal, and to Mr. van Heiden, the States-General's Envoy Extraordinary and Plenipotentiary at the Court of Prussia, the former being rendered necessary to perfect accession to the above-mentioned convention, and the latter having informed the Ministry of Russia of acceding to the convention in that manner, so that both may make communication to that effect to the Courts whereto they are accredited; and, lastly, copies of the treaty of commerce with Spain in 1650 and with France in 1739 shall, as expressly requested by them, be sent to the Ministers Plenipotentiary at Petersburg.

The honorable deputies of the Provinces of Gelderland, Utrecht, Friesland, Overijssel, of the town of Groningen and rural Ommen have accepted the resolutions of the States-General, their superiors, introduced from time to time upon this subject, and those of Holland and West Friesland, that of the States-General, their superiors, with regard to the time of notifying the declaration to the belligerent Powers.

The honorable deputy of the Province of Zealand who was present declared that as the members had knowledge of the fact that the resolution of the States-General, his superior, of the third of this month, here introduced, was against the sentiment of the majority of the other provinces, he had hoped that the said members would be willing to postpone adopting a conclusion, believing that, according to the union, no conclusion could be reached by a majority for the making of conventions, alliances or treaties. But the other provinces having proceeded to a conclusion, he had accepted, under protest, the consequences which might result, leaving them to the responsibility of the other provinces.

**British Additional Instructions to the Commanders of War-ships  
and Privateers, November 20, 1780<sup>1</sup>**

An additional instruction to the commanders of all His Majesty's ships of war and privateers, that have, or may have, letters of marque against the French King, or the King of Spain, their vassals or subjects, or others inhabiting within any of their countries, territories, or dominions, or against any other enemies, or rebellious subjects of the Crown of Great Britain. Given at our Court at St. James's the twentieth day of November, 1780, in the twenty-first year of our reign.

[L. S.]

Whereas, notwithstanding our former instructions to the several commanders aforesaid, some inconvenience has arisen from an ignorance of the nature and extent of our engagements with our good sister the Empress of all the Russias: we being determined to adhere strictly to the faith of those engagements, and solicitous to prevent, as much as possible, all illicit proceedings, do hereby enjoin to all the several commanders aforesaid, the strictest observance of the stipulations of the 10th and 11th articles of the treaty of commerce, concluded between us and Her Imperial Majesty on the 20th of June, 1766, which articles are here inserted, that they may be accurately known to all the aforesaid commanders, and observed by them as an inviolable law.

<sup>1</sup>Hennings, vol. 2, p. 63.

## ARTICLE 10

The subjects of the two high contracting Parties shall be at liberty to go, come, and trade freely with the States, with which one or other of the parties shall at this or at any future period be engaged in war, provided they do not carry warlike stores to the enemy.

This liberty, however, not to extend to places actually blocked up, or besieged, either by sea or land. At all other times, and with the single exception of warlike stores, the aforesaid subjects may transport to these places all sorts of merchandise, as well as passengers, without the least impediment. In the searching of merchant ships, men of war and privateers shall behave as favorably, as a state of actual war can possibly permit towards the most friendly neutral Powers, observing, as far as may be, the principles and maxims of the law of nations, that are generally acknowledged.

## ARTICLE 11

All cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, fuses, flint, stones, matches, powder, saltpeter, sulphur, breast-plates, pikes, swords, belts, cartouch-bags, saddles and bridles, beyond the quantity that may be necessary for the use of the ship, or beyond what every man serving on board the ship, and every passenger ought to have, shall be accounted ammunition or warlike stores, and if found shall be confiscated according to law, as contraband goods, or prohibited effects, but neither the ships nor passengers, nor the other merchandises found at the same time, shall be detained or hindered from prosecuting their voyage.

By His Majesty's command,

STORMONT

**Reply of the Court of France, December 12, 1780, to the Russian Memorandum concerning the Accession of Denmark and Norway and Sweden to the System of Armed Neutrality<sup>1</sup>**

The King feels highly flattered by the confidence with which the Empress of all the Russias communicates to him the convention

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 209.

signed at Copenhagen on July 9<sup>1</sup> last between Her Imperial Majesty and the King of Denmark, and at St. Petersburg on July 21/August 1<sup>2</sup> last between Her said Imperial Majesty and the King of Sweden.

His Majesty has recognized with pleasure that this convention contains the most appropriate measure to ensure the freedom of the seas and the immunity of the flag of neutral Powers. The declarations of His Majesty in this respect, both to Her Majesty the Empress of all the Russias and to Their Danish and Swedish Majesties; the order that he has given to the officers of his fleet and to all his privateers; and the care that he is taking to ensure their execution must convince Her Imperial Majesty that the object of the said convention will be entirely fulfilled by all captains flying the French flag. His Majesty has had many opportunities during the past three years to make known to his subjects and to Europe that the happiness and prosperity of neutral nations, and of the Russian nation in particular, have entered in no small measure in the calculations of his policy and in his military projects. He hopes that his efforts and his example will help to strengthen the system which has brought into being and is extending from day to day the association of neutral Powers. His hopes will be fulfilled if there results from this system a diminution of the evils of war and the assurance that princes and peoples who observe a strict neutrality shall never suffer injury from war.

VERSAILLES, *December 12, 1780.*

DE VERGENNES

### **Manifesto of His Britannic Majesty regarding Relations with the Netherlands, December 20, 1780<sup>3</sup>**

Through the whole course of our reign, our conduct towards the States-General of the United Provinces has been that of a sincere friend and faithful ally. Had they adhered to those wise principles, which used to govern the Republik, they must have shewn themselves

<sup>1</sup>*Ante*, p. 299.

<sup>2</sup>*Ante*, p. 311.

<sup>3</sup>Hennings, vol. 1, p. 67. For the counter-manifesto of the States-General of the Netherlands, see *post*, p. 380.

equally solicitous to maintain the friendship, which has so long subsisted between the two nations, and which is essential to the interests of both. But from the prevalence of a faction devoted to France, and following the dictates of that Court, a very different policy has prevailed. The return made to our friendship, for some time past, has been an open contempt of the most solemn engagements, and a repeated violation of public faith.

On the commencement of the defensive war, in which we found ourselves engaged by the aggression of France, we shewed a tender regard for the interests of the States-General, and a desire of securing to their subjects every advantage of trade, consistent with the great and just principle of our own defence. Our Ambassador was instructed to offer a friendly negotiation, to obviate everything that might lead to disagreeable discussion; and to this offer, solemnly made by him to the States-General, the 2d of November 1778, no attention was paid.

After the number of our enemies increased by the aggression of Spain, equally unprovoked with that of France, we found it necessary to call upon the States-General for the performance of their engagements. The fifth article of the perpetual defensive alliance between Our Crown and the States-General, concluded at Westminster the 3d of March, 1678, besides the general engagement for succours, expressly stipulates, "That that party of the two allies, that is not attacked, shall be obliged to break with the aggressor in two months after the party attacked shall require it:—"Yet two years have passed, without the least assistance given to us, without a single syllable in answer to our repeated demands.

So totally regardless have the States been of their treaties with us, that they readily promised our enemies to observe a neutrality, in direct contradiction to those engagements; and whilst they have withheld from us the succours they were bound to furnish, every secret assistance has been given the enemy; and inland duties have been taken off, for the sole purpose of facilitating the carriage of naval stores to France.

In direct and open violation of treaty, they suffered an American pirate to remain several weeks in one of their ports; and even permitted a part of his crew to mount guard in a fort in the Texel.

In the East Indies, the subjects of the States-General, in concert with France, have endeavoured to raise up enemies against us.

In the West Indies, particularly at St. Eustatius, every protection and assistance has been given to our rebellious subjects. Their privateers are openly received in the Dutch harbours; allowed to refit there; supplied with arms and ammunition; their crews recruited; their prizes brought in and sold; and all this in direct violation of as clear and solemn stipulations, as can be made.

This conduct, so inconsistent with all good faith, so repugnant to the sense of the wisest part of the Dutch nation, is chiefly to be ascribed to the prevalence of the leading magistrates of Amsterdam, whose secret correspondence with our rebellious subjects was suspected, long before it was made known by the fortunate discovery of a treaty, the first article of which is:—

There shall be a firm inviolable and universal peace and sincere friendship between Their High Mightinesses, the estates of the seven United Provinces of Holland, and the United States of North America, and the subjects and people of the said parties; and between the countries, islands, cities, and towns, situated under the jurisdiction of the said United States [Provinces] of Holland, and the said United States of America, and the people and inhabitants thereof, of every degree without exception of persons or places.

This treaty was signed in September, 1778, by the express order of the Pensionary of Amsterdam, and other principal magistrates of that city. They now not only avow the whole transaction, but glory in it, and expressly say, even to the States-General, "that what they did, was what their indispensable duty required."

In the meantime, the States-General declined to give any answer to the memorial presented by our Ambassador; and this refusal was aggravated by their proceeding upon other business, nay upon the consideration of this very subject to internal purposes; and while they found it impossible to approve the conduct of their subjects, they still industriously avoided to give us the satisfaction so manifestly due.

We have every right to expect, that such a discovery would have roused them to a just indignation at the insult offered to us, and to themselves; and that they would have been eager to give us full and ample satisfaction for the offence, and to inflict the severest punishment upon the offenders. The urgency of the business made an instant answer essential to the honour and safety of this country. The demand was accordingly pressed by our Ambassador in repeated con-

ferences with the Ministers, and in a second memorial: It was pressed with all the earnestness which could proceed from our ancient friendship, and the sense of recent injuries; and the answer now given to a memorial on such a subject, delivered above five weeks ago, is, "That the States have taken it *ad referendum*." Such an answer, upon such an occasion, could only be dictated by the fixed purpose of hostility, meditated and already resolved by the States, induced by the offensive Councils of Amsterdam, thus to countenance the hostile aggression, which the magistrates of that city have made in the name of the Republik.

There is an end of the faith of all treaties with them, if Amsterdam may usurp the sovereign power, may violate those treaties with impunity, by pledging the States to engagements directly contrary, and leaguering the Republik with the rebels of a sovereign, to whom she is bound by the closest ties. An infraction of the law of nations, by the meanest member of any country, gives the injured State a right to demand satisfaction and punishment: How much more so, when the injury complained of is a flagrant violation of public faith, committed by leading and predominant members in the States? Since then the satisfaction we have demanded is not given; we must, though most reluctantly, do ourselves that justice which we cannot otherwise obtain: we must consider the States-General as parties in the injury, which they will not repair, as sharers in the aggression which they refuse to punish, and must act accordingly. We have therefore ordered our Ambassador to withdraw from The Hague, and shall immediately pursue such vigorous measures as the occasion fully justifies, and our dignity and the essential interests of our people require.

From a regard to the Dutch nation at large, we wish it were possible to direct those measures wholly against Amsterdam; but this cannot be, unless the States-General will immediately declare, that Amsterdam shall, upon this occasion, receive no assistance from them, but be left to abide the consequences of its aggression.

Whilst Amsterdam is suffered to prevail in the general councils, and is backed by the strength of the State, it is impossible to resist the aggression of so considerable a part, without contending with the whole. But we are too sensible of the common interests of both countries not to remember, in the midst of such a contest, that the only point to be aimed at by us, is to raise a disposition in the councils of the Republik to return to our ancient union, by giving us that satis-



faction for the past, and security for the future, which we shall be as ready to receive as they can be to offer, and to the attainment of which we shall direct all our operations. We mean only to provide for our own security, by defeating the dangerous designs that have been formed against us. We shall ever be disposed to return to friendship with the States-General, when they sincerely revert to that system, which the wisdom of their ancestors formed, and which has now been subverted by a powerful faction, conspiring with France against the true interests of the Republik, no less than against those of Great Britain.

**British Order of Council granting Reprisals against the Ships, Goods and Subjects of the Netherlands, December 20, 1780<sup>1</sup>**

*Present: The King's Most Excellent Majesty in Council.*

His Majesty, having taken into consideration the many injurious proceedings of the States-General of the United Provinces, and their subjects, as set forth in his royal manifesto of this date, and being determined to take such measures, as are necessary for vindicating the honour of his Crown, and for procuring reparation and satisfaction, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, That general reprisals be granted against the ships, goods, and subjects of the States-General of the United Provinces, so that as well His Majesty's fleet and ships, as also all other ships and vessels, that shall be commissioned by letters of marque or general reprisals, or otherwise, by His Majesty's commissioners for executing the office of Lord High Admiral of Great Britain, shall and may lawfully seize all ships, vessels, and goods belonging to the States-General of the United Provinces, or their subjects, or others inhabiting within any of the territories of the aforesaid States-General, and bring the same to judgment in any of the courts of admiralty within His Majesty's dominions: and to that end His Majesty's Advocate General, with the Advocate of the Admiralty, are forthwith to prepare the draught of a commission, and present the same to His

<sup>1</sup>Hennings, vol. 1, p. 71.

Majesty at this Board, authorizing the said commissioners for executing the office of Lord High Admiral to will and require the High Court of Admiralty of Great Britain, and the lieutenant and judge of the said court, his surrogate or surrogates, as also the several courts of admiralty within His Majesty's dominions, to take cognizance of, and judicially proceed upon all and all manner of captures, seizures, prizes and reprisals of all ships and goods, that are or shall be taken, and to hear and determine the same; and, according to the course of admiralty and the laws of nations, to adjudge and condemn all such ships, vessels and goods, as shall belong to the States-General of the United Provinces or their vassals and subjects, or to any others inhabiting within any of the countries, territories and dominions of the aforesaid States-General; and that such powers and clauses be inserted in the said commission as have been usual, and are according to former precedents: and they are likewise to prepare, and lay before His Majesty at this Board, a draught of such instructions as may be proper to be sent to the courts of admiralty in His Majesty's foreign governments and plantations, for their guidance herein; as also another draught of instructions for such ships as shall be commissioned for the purposes afore-mentioned.

**British Instructions to Commanders of Merchant Ships and Vessels having Letters of Marque and Reprisals, December 21, 1780<sup>1</sup>**

Instructions for the commanders of such merchant ships or vessels, who shall have letters of marque and reprisals for private men of war against the States-General of the United Provinces, or their subjects, or others inhabiting within any of the territories of the aforesaid States-General, by virtue of our commission granted under our great seal of Great Britain, bearing date the twentieth day of this instant December. Given at our Court at St. James's the twenty-first day of December, 1780, in the twenty-first year of our reign.

<sup>1</sup>*Ibid.*, vol. 2, p. 65.

## ARTICLE 1

That it shall be lawful for the commanders of ships authorized by letters of marque and reprisal for private men of war, to set upon by force of arms, and subdue and take the men of war, ships and vessels, goods, wares and merchandises of the States-General of the United Provinces, and their subjects, and others inhabiting within any of the territories of the aforesaid States-General; but so as that no hostility be committed, nor prize attacked, seized, or taken, within the harbours of princes and States in amity with us, or in their rivers or roads, within the shot of their cannon, unless by permission of such princes or States, or of their commanders or governors in chief in such places.

## ARTICLE 2

That the commanders of ships and vessels so authorized as aforesaid, shall bring all ships, vessels, and goods, which they shall seize and take, into such port of this our realm of England, or some other port of our dominions not in rebellion, as shall be most convenient for them, in order to have the same legally adjudged in our High Court of Admiralty of England, or before the judges of any other admiralty court lawfully authorized within our dominions.

## ARTICLE 3

That after such ships, vessels, and goods, shall be taken and brought into any port, the taker, or one of his chief officers, or some other person present at the capture, shall be obliged to bring or send, as soon as possibly may be, three or four of the principal of the company (whereof the master, mate, or boatswain, to be always two) of every ship or vessel so brought into port, before the judge of our High Court of Admiralty of England, or his surrogate, or before the judge of such other admiralty court within our dominions, lawfully authorized as aforesaid, or such as shall be lawfully commissioned in that behalf, to be sworn and examined upon such interrogatories as shall tend to the discovery of the truth concerning the interest or property of such ship or ships, vessel or vessels, and of the goods, merchandises, or other effects found therein; and the taker shall be rather obliged, at the time he produceth the company to be examined, and before any monition shall be issued, to bring and deliver into the hands of the

judge of the High Court of Admiralty of England, his surrogate, or the judge of such other admiralty court within our dominions lawfully authorized, or others commissioned as aforesaid, all such papers, passes, sea-briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings as shall be delivered up, or found on board any ship. The taker, or one of his chief officers, or some other person who was present at the capture, and saw the said papers and writings delivered up, or otherwise found on board at the time of the capture, making oath that the said papers and writings are brought and delivered in as they were received and taken, without any fraud, addition, subduction or embezzlement, or otherwise to account for the same upon oath, to the satisfaction of the court.

#### ARTICLE 4

That the ships, vessels, goods, wares, merchandises, and effects, taken by virtue of letters of marque and reprisals as aforesaid, shall be kept and preserved, and no part of them shall be sold, spoiled, wasted, or diminished; and that the bulk thereof shall not be broken before judgment be given in the High Court of Admiralty of England, or some other court of admiralty lawfully authorized in that behalf, that the ships, goods, and merchandises are lawful prize.

#### ARTICLE 5

That if any ship or vessel belonging to us, or our subjects, shall be found in distress by being in fight, set upon, or taken by the enemy, or by reason of any other accident, the commanders, officers, and company of such merchant ships or vessels as shall have letters of marque and reprisals as aforesaid, shall use their best endeavours, and give aid and succour to all such ship and ships, and shall, to the utmost of their power, labour to free the same from the enemy, or any other distress.

#### ARTICLE 6

That the commanders or owners of such ships and vessels, before the taking out letters of marque and reprisals, shall make application in writing, subscribed with their hands, to our High Admiral of Great Britain, or our commissioners for executing that office for the time being, or the lieutenant or judge of the said High Court of Admiralty,

or his surrogate, and shall therein set forth a particular, true, and exact description of the ship or vessel for which such letter of marque and reprisal is requested, specifying the burthen of such ship or vessel, and the number and nature of the guns, and what other warlike furniture and ammunition are on board the same, to what place the ship belongs, and the name or names of the principal owner or owners of such ship and vessel, and the number of men intended to be put on board the same, and for what time they are victualed, also the names of the commander and officers.

#### ARTICLE 7

That the commanders of ships and vessels having letters of marque and reprisals as aforesaid, shall hold and keep, and are hereby enjoined to hold and keep a correspondence, by all conveniences and upon all occasions, with our High Admiral of Great Britain, or our commissioners for executing that office for the time being, or their secretary; so as from time to time to render and give him or them not only an account or intelligence of their captures and proceedings by virtue of such commissions, but also of whatsoever else shall occur unto them, or be discovered and declared to them, or found out by them, or by examination of, or conference with, any mariners or passengers of or in the ships or vessels taken, or by any other ways and means whatsoever, touching or concerning the designs of the enemy, or any of their fleets, ships, vessels or parties; and of the stations, seaports, and places, and of their intents therein; and of what ships or vessels of the enemy bound out or home, or where cruising, as they shall hear of; and of what else material in these cases may arrive at their knowledge; to the end such course may be thereupon taken, and such orders given as may be requisite.

#### ARTICLE 8

That no commander of any ship or vessel having a letter of marque and reprisal as aforesaid, shall presume, as they will answer it at their peril, to wear any jack, pennant, or other ensign, or colours usually borne by our ships; but that, besides the colours usually borne by merchant ships, they do wear a red jack, with the union jack described in the canton at the upper corner thereof, near the staff.

## ARTICLE 9

That no commander of any ship or vessel having a letter of marque and reprisal as aforesaid, shall ransom or agree to ransom, or quit, or set at liberty, any ship or vessel, or their cargoes, which shall be seized and taken.

## ARTICLE 10

That all captains or commanding officers of ships having letters of marque and reprisals, do send an account of, and deliver over, what prisoners shall be taken on board any prizes, to the commissioners appointed, or to be appointed, for the exchange of prisoners of war, or the persons appointed in the seaport towns to take charge of prisoners; and that such prisoners be subject only to the orders, regulations, and directions of the said commissioners: and that no commander, or other officer of any ship having a letter of marque and reprisal as aforesaid, do presume, upon any pretence whatsoever, to ransom any prisoners.

## ARTICLE 11

Whereas information has been received, that several of the seamen belonging to vessels employed in our service have been induced to desert from the said vessels, and to enter on board privateers, by the offer of large bounties and other advantages held out to them by the commanders of such privateers; in consequence of which, the said vessels have been detained in port to the great detriment and distress of our service; for the avoiding such inconvenience for the future, we do hereby strictly charge and enjoin all commanders of privateers and merchant ships, having letters of marque, that they do upon no account receive and detain on board their ships any seamen belonging to any of our ships of war, or any other vessels employed in our service, either as transports, store ships, or victualers; and that if they should at any time undesignedly have received any such seamen, they do immediately deliver him up, upon application made by or on behalf of the captain or commander of such ship of war, or other ship employed in our service, to which he belonged before he entered on board such privateer or commissioned ship, under pain of our highest displeasure, and such penalty as by law may be inflicted.

## ARTICLE 12

That no commander of any man of war or privateer do upon any pretence take any French or Spanish vessel or vessels belonging to the United Provinces, or to any other enemies or rebellious subjects of the Crown of Great Britain, out of any port belonging to the Ottoman Empire, nor molest, detain, or imprison the persons of any of the subjects of the Grand Signor, nor seize or detain as prize their ships or effects, in the Levant Seas, or any other part of the ocean, under pain of our highest displeasure, and such punishment as by law may be inflicted; and that the commanders of men of war and privateers do carry the subjects of the Ottoman Empire and their effects, which they shall find on board French or Spanish ships, or ships belonging to the United Provinces, or to any other enemies or rebellious subjects of the Crown of Great Britain, seized in the Levant Seas, bound to or from any port in Egypt, or to or from one port to another in the Levant Seas, either to the nearest port in Turkey or Egypt, or to their destined port, and there land such persons and effects as shall manifestly appear to belong to the Turks; and that no effects or merchandise taken on board any French, Spanish, Dutch, or other enemies or rebellious subjects ship, which shall be claimed by any subjects of the Grand Signor, as being their property, shall be proceeded against for condemnation in any other court but the High Court of Admiralty of England; and that no proceedings shall be had in the said High Court of Admiralty against any goods or effects which shall appear to be the property of any subjects of the Ottoman Empire, until notice be first given of the said proceedings to the Turkey company, to the end that care may be taken that a proper and legal defence may be made on behalf of the claimants or proprietors, subjects of the Grand Signor.

## ARTICLE 13

Whereas notwithstanding our former instructions to the several commanders aforesaid, that nothing be in any wise attempted against the ships, vessels, and goods of any prince or State in amity with us, or of their subjects; yet it hath so happened from ignorance of the several treaties subsisting between us and foreign Powers, that several commanders of private ships of war have subjected themselves to very great costs and damages in our High Court of Admiralty for such irregular proceedings: we being desirous to adhere strictly to the

faith of treaties, and as much as possible to prevent all illicit proceedings, do make known more particularly, that the several treaties of January 29, 1641-2,<sup>1</sup> and of July 10, 1654,<sup>2</sup> subsisting between the British and Portuguese nations, are to be duly observed according to former precedents, and especially the 23d article of the last-mentioned treaty, whereby all goods and merchandise of the enemies of either of the contracting Parties, put on board the ships of either of them, or of their people or subjects, shall remain untouched: provided always, that nothing shall appear by any persons on board the said ships, or by any letters, papers, or other documents found on board the same, or by any other strong, circumstantial, and probable proofs, that the ship belongs in the whole, or in part, to any enemies of the Crown of Great Britain, or is going to, or coming from, the British Colonies in America, or is carrying the goods of our rebellious subjects, or is otherwise concerned in any illegal trade: and we farther will, that all due respect be paid to the passports of her Portuguese Majesty, and to the certificates or cockets of the officers of her customs, whereby it shall appear that the party obtaining the same did make oath before the proper magistrate or officers, that the appearer was truly a subject resident generally, himself and family, if he hath one, in the dominions of her Portuguese Majesty, and that no other person than himself, or other Portuguese subjects, have, at the time of obtaining such passport or certificate, or will have in view at the arrival of the ship at her destined port, any right, interest, or property in the said ship, and that the said certificates or cockets contain a fair, full, and true particular of the goods on board; and that such passports be granted for the voyage only out and home, and for ships only lying at that time in some port of the Portuguese dominions, when or where the same shall be granted.

#### ARTICLE 14

That in conformity to an explanatory article of the treaty of alliance and commerce between England and Denmark, concluded at Copenhagen, July 11, 1670, which hath been lately concluded and agreed upon between us and the King of Denmark, all sorts of arms, and things thereto belonging, as cannons, muskets, mortars, petards, bombs, grenadoes, saucisses, carriages, rests, bandaliers, powder, match, sal-

<sup>1</sup>Dumont, vol. 6, pt. 1, p. 238.

<sup>2</sup>*Ibid.*, pt. 2, p. 82.



petre, bullets, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horses, saddles, holsters, belts, and generally all other implements of war; as also ship timber, pitch, tar, rosin, copper in sheets, sail cloth, hemp, cordage, and generally every thing that is used in the equipment of ships (except unwrought iron and fir planks), laden in Danish ships, and bound to the enemies country, are accounted contraband goods: but fish and flesh, fresh or salted, wheat, or other grain, flour, pulse, oil, wine, and generally every thing that serves for the nourishment and sustenance of life, laden in Danish ships, and bound to the enemies country, are not accounted contraband, provided that the places to which they are bound, are not besieged or blocked up.

#### ARTICLE 15

Whereas, notwithstanding our former instructions to the several commanders aforesaid, some inconvenience has arisen from an ignorance of the nature and extent of our engagements with our good sister the Empress of all the Russias: we being determined to adhere strictly to the faith of those engagements, and sollicitous to prevent as much as possible all illicit proceedings, do hereby enjoin to all the several commanders aforesaid the strictest observance of the stipulations of the 10th and 11th articles of the treaty of commerce, concluded between us and Her Imperial Majesty on the 20th of June, 1766, which articles are here inserted, that they may be accurately known to all the aforesaid commanders, and observed by them as an inviolable law.

#### ARTICLE 10

The subjects of the two high contracting Parties shall be at liberty to go, come, and trade freely with the States, with which one or other of the parties shall at this or at any future period be engaged in war, provided they do not carry warlike stores to the enemy.

This liberty, however, not to extend to places actually blocked up, or besieged, either by sea or land. At all other times, and with the single exception of warlike stores, the aforesaid subjects may transport to these places all sorts of merchandise, as well as passengers, without the least impediment. In the searching of merchant ships, men of war and privateers shall behave as favourably, as a state of actual war can possibly permit towards the most friendly neutral Powers, observing, as far as may be, the

principles and maxims of the law of nations, that are generally acknowledged.

#### ARTICLE 11

All cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, fuses, flint stones, matches, powder, salpeter, sulphur, breast-plates, pikes, swords, belts, cartouch-bags, saddles and bridles, beyond the quantity that may be necessary for the use of the ship, or beyond what every man serving on board the ship, and every passenger ought to have, shall be accounted ammunition or warlike stores, and if found shall be confiscated according to law, as contraband goods, or prohibited effects, but neither the ships nor passengers, nor the other merchandises found at the same time, shall be detained or hindered from prosecuting their voyage.

#### ARTICLE 16

That in case the commander of any ship having a letter of marque and reprisal as aforesaid, shall act contrary to these instructions, or any such further instructions of which he shall have due notice, he shall forfeit his commission to all intents and purposes, and shall, together with his bail, be proceeded against according to law, and be condemned in costs and damages.

#### ARTICLE 17

That all commanders of ships and vessels having letters of marque and reprisal shall, by every opportunity, send exact copies of their journals to the Secretary of the Admiralty, and proceed to the condemnation of their prizes as soon as may be, and without delay.

#### ARTICLE 18

That commanders of ships and vessels having letters of marque and reprisals shall, upon due notice being given to them, observe all such other instructions and orders as we shall think fit to direct from time to time for the better carrying on this service.

#### ARTICLE 19

That all persons who shall violate these, or any other of our instructions, shall be severely punished, and also required to make full reparation to persons injured contrary to our instructions, for all damages they shall sustain by any capture, embezzlement, demurrage, or otherwise.

## ARTICLE 20

That before any letter of marque and reprisals for the purpose aforesaid shall issue under seal, bail shall be given with sureties, before the lieutenant and judge of our High Court of Admiralty of England, or his surrogate, in the sum of three thousand pounds sterling, if the ship carries above one hundred and fifty men; and if a less number, in the sum of fifteen hundred pounds sterling, which bail shall be to the effect and in the form following:

Which day, time, and place personally appeared  
 and who submitting themselves to the  
 jurisdiction of the High Court of Admiralty of England, obliged themselves, their heirs, executors, and administrators, in the sum of  
 pounds of lawful money of Great Britain, to  
 this effect; that is to say, that whereas is duly  
 authorized by letters of marque and reprisals, with the ship called the  
 of the burthen of about tons, whereof  
 he the said goeth master, by force of arms to attack, surprise, seize, and take all ships and vessels, goods, wares and merchandises, chattels and effects, belonging to the States-General of the United Provinces, or their subjects, or others inhabiting within any of the territories of the aforesaid States-General, excepting only within the harbours or roads within shot of the cannon of princes and States in amity with His Majesty. And whereas he the said  
 hath a copy of certain instructions, approved of and passed by His Majesty in Council, as by the tenor of the said letters of marque and reprisals, and instructions thereto relating, more at large appeareth. If therefore nothing be done by the said  
 or any of his officers, mariners, or company, contrary to the true meaning of the said instructions, and of all other instructions which may be issued in like manner hereafter, and whereof due notice shall be given him, but that the letters of marque and reprisals aforesaid, and the said instructions, shall in all particulars be well and duly observed and performed, as far as they shall the said ship, master, and company any way concern; and if they shall give full satisfaction for any damage or injury which shall be done by them, or by any of them, to any of His Majesty's subjects, or of foreign States in amity with His Majesty; and also shall duly and truly pay, or cause to be paid, to His Majesty, or the customers or officers

appointed to receive the same for His Majesty, the usual customs due to His Majesty, of and for all ships and goods so as aforesaid taken and adjudged for prize: and moreover if the said shall not take any ship or vessel, or any goods or merchandises, belonging to the enemy, or otherwise liable to confiscation, through consent, or clandestinely, or by collusion, by virtue, colour, or pretence of his said letters of marque and reprisals, that then this bail shall be void, and of none effect; and unless they shall so do, they do all hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, where-soever the same shall be found, to the value of the sum of pounds before mentioned: and in testimony of the truth thereof they have hereunto subscribed their names.

By His Majesty's command,

STORMONT

### **Spanish Ordinance relative to the Danish Flag, December 31, 1780<sup>1</sup>**

When the King received the declaration from the King of Denmark in regard to the neutrality which he proposed to follow during the present war, stating that only such goods would be seized as by general treaties are expressly regarded as contraband goods, I communicated to your Excellency, with the approval of His Majesty, the royal intentions under date of August 7th last, relative to the manner in which Danish vessels should be treated; since then, the King has been informed of the convention between the King of Denmark and the King of England, interpreting the treaty of commerce of 1670, to the effect that building timber, pitch, tar, rosin, copper in plates, sail-canvas, ropes and generally all things that may serve to arm vessels are likewise to be regarded as contraband goods, in case they are found on Danish vessels bound for countries hostile to England, with the exception of pig-iron and pine boards; but that they may freely transport into the enemy ports and countries salted meat, fresh or salted fish, wheat and other grains, vegetables, oil, wine, and any other arti-

<sup>1</sup>Hennings, vol. 2, p. 349.

cle necessary to sustain life, it being however understood that the said ports or places are neither besieged nor blockaded.

In consequence of this conduct of the Danish Court which, without the counsel and advice of His Majesty, changes the said declaration of accepted neutrality, the King revokes all concessions which he had ordered should be made to Danish vessels, on the ground that this could not be declared or admitted. And His Majesty orders that all articles specified in the said convention between England and Denmark be regarded as contraband when transported by vessels of this Power for the service of the enemies, which articles are in general the same as are specified in Article 15 of the ordinance for privateering, dated July 1, 1779; every captain of my maritime forces and the private corsairs shall have the said ordinance on board of their vessels in order to carry out exactly that which is directed in the present royal resolution.

MADRID, *December 31, 1780.*

LE MARQUIS GONZALES DE CASTEJON

To his Excellency, ADMIRAL CORDOVA.

**Act of January 4, 1781, by which the States-General of the Netherlands accede to the Conventions for an Armed Neutrality between Russia and Denmark and Norway, and Russia and Sweden<sup>1</sup>**

The solicitude of Her Imperial Majesty of all the Russias for the maintenance of the interests and the rights of her subjects having led her to give solid and permanent stability to a just and reasonable system of neutrality at sea, and to contract to this end a formal agreement with His Majesty the King of Denmark and of Norway, which was followed immediately by a similar one with His Majesty the King of Sweden, has animated Their High Mightinesses the Lords States-General of the United Provinces to accept the invitation of Her Imperial Majesty and to adopt principles in conformity with those set

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 215.

forth in her declaration and in those of the aforesaid Powers. To this end they have determined, not only to manifest in a formal declaration, which was recently transmitted to the Powers now at war, their point of view, similar to that of the Empress and the two Kings, her allies, but also to take part directly and effectively, as principal contracting Parties, in the stipulations contracted among them for the protection of the innocent navigation of their respective subjects.

As a result of this determination of Their High Mightinesses, and by virtue of Article 10 of the double maritime convention of Copenhagen and of St. Petersburg, in which it is stated:

The chief aim and principal object of the present convention being to secure the freedom of trade and navigation, the high contracting Powers have antecedently agreed, and do engage to give to all other neutral Powers free leave to accede to the present treaty, and, after a thorough knowledge of the principles on which it rests, share equally in the obligations and advantages thereof.

Her Imperial Majesty of all the Russias, in concert with Their Majesties the Kings, her allies, had even less hesitation in entering into negotiations with Their High Mightinesses, both in her own behalf and in behalf of her two allies, whose desires and views had been entrusted to her, since Their High Mightinesses saw fit to send to her, for this purpose, an embassy extraordinary, instructed to make known in their name how agreeable to them was the invitation of the Empress, and to form the proposed union between the Crowns of the North and the United Provinces.

To accomplish this desired and salutary object, Her Imperial Majesty has appointed as her plenipotentiaries, Nikita Count Panin, her Privy Councilor, Senator, Chamberlain, and Chevalier of the Orders of St. Andrew, St. Alexander-Newsky, and St. Anne, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander-Newsky and St. Anne, Alexander de Besborodka, Major General of her Armies, and Colonel commanding the Kiovia Regiment of Militia of Little Russia, and Pierre de Baccounin, her Councilor of State, member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne; Their High Mightinesses having charged with their full powers William Louis Baron van Wassenaer, Lord of Starrenburg, of the Body of Nobles of the Province of Holland and of West Friesland, Steward of Rhyndland,

ordinary Deputy of the said Province in the Assembly of the States-General, and Ambassador Extraordinary and Plenipotentiary of Their High Mightinesses to the Imperial Court of Russia; Theodore John Baron van Heeckeren, Lord of Brantzenburg, ordinary Deputy in the Assembly of the States-General, representing the First Order of the Province of Utrecht, and their Ambassador Extraordinary and Plenipotentiary at the Imperial Court of Russia; and John Isaac Swaart, Resident of Their High Mightinesses at the same Court; who, after having exchanged their full powers, found to be in good and due form, have decided and concluded that the entire twelve articles of the two conventions of the same content concluded at Copenhagen on June 28/July 9, 1780,<sup>1</sup> between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway, and at St. Petersburg on July 21/August 1, 1780,<sup>2</sup> between Her Imperial Majesty . . .<sup>3</sup> their clauses and obligations, with the exception of the changes therein, resulting from the nature of the different treaties and engagements existing between the high contracting Parties and either of the Powers now at war, as set forth in Articles 2 and 3 of the double maritime convention of Copenhagen and of St. Petersburg, above indicated, must be regarded as if they had been made, concluded and established, word for word between Her Imperial Majesty of all the Russias and Their High Mightinesses, as principal contracting Parties, with the express reservations that the said Articles 2 and 3 of the aforesaid conventions be particularly adapted to the former engagements of Their High Mightinesses with regard to merchandise and contraband. With respect to such merchandise they declare it to be their desire to hold strictly to the stipulations of the treaties concluded between themselves and the belligerent Powers, and specifically in the sixth article of the marine treaty with the Crown of Spain, of December 17, 1650,<sup>4</sup> the third article of their treaty with the Crown of Great Britain, of December 1, 1674,<sup>5</sup> and the sixteenth article of their treaty of commerce, navigation and marine with the Crown of France, concluded on December 21, 1739,<sup>6</sup> for the period of twenty-five years, whose provisions and specifications on the subject of contraband Their High Mightinesses extend indefinitely, as being founded on the law of nature and of nations.

<sup>1</sup>*Ante*, p. 299.

<sup>2</sup>*Ante*, p. 311.

<sup>3</sup>Apparent omission.

<sup>4</sup>Dumont, vol. 6, pt. 1, p. 570.

<sup>5</sup>*Ibid.*, vol. 7, pt. 1, p. 282.

<sup>6</sup>Wenck, vol. 1, p. 414.

In order to prevent any inaccuracy, the plenipotentiaries of Her Imperial Majesty shall hand to those of Their High Mightinesses certified copies of the two conventions of Copenhagen and of St. Petersburg, which shall be regarded as having been inserted word for word in the present act.

Ratifications of this act of accession, concluded between Her Imperial Majesty of all the Russias, and Their High Mightinesses of the States-General, shall be furnished and exchanged here in St. Petersburg within the period of two months, or sooner if possible.<sup>1</sup> It has likewise been agreed that on the occasion of this exchange of ratifications, Their High Mightinesses shall have transmitted two uniform declarations, for Their Majesties the two Kings allied with the Empress, in the form hereto annexed,<sup>2</sup> which, through the intermediary of the Minister of Russia are to be exchanged for those of Their aforesaid Majesties, in virtue of which these two Sovereigns and the Lords States-General accept forthwith among themselves the mutual stipulations hereinbefore set forth.

In faith whereof we the undersigned, by virtue of our full powers, have signed and affixed hereto the seals of our arms.

Done at St. Petersburg, December 24, 1780.<sup>3</sup>

[L. S.] COUNT PANIN

[L. S.] COUNT J. D'OSTERMANN

[L. S.] ALEXANDER DE BESBORODKA

[L. S.] PIERRE DE BACOUNIN

[L. S.] B. VAN WASSENAER

[L. S.] B. VAN HEECKEREN

[L. S.] J. I. SWAART

<sup>1</sup>Ratifications of this act were exchanged at St. Petersburg on February 12, 1781, by the same plenipotentiaries who signed it.

<sup>2</sup>See *post*, p. 350.

<sup>3</sup>January 4, 1781, new style.



**Separate Act joined to the Act of January 4, 1781, by which the States-General of the Netherlands accede to the Conventions for an Armed Neutrality between Russia and Denmark and Norway, and Russia and Sweden<sup>1</sup>**

The six separate articles forming a part of the double convention of Copenhagen and of St. Petersburg, with the exception of the first article, which contains a special arrangement between the Empire of Russia and the two Crowns of Denmark and of Sweden with regard to the tranquillity of the Baltic Sea, must be considered and regarded as though they had been inserted word for word in the act of accession of Their High Mightinesses to the double convention of Copenhagen and of St. Petersburg, signed here in St. Petersburg this same day. To elucidate and to explain the fourth of these separate articles relating to a provisional arrangement between the two high contracting Powers in the event of the joining of their squadrons, it has been agreed with regard to the authority of the commanding officer, to follow the etiquette generally accepted between Crowned Heads and the Republic.

In faith whereof, we the undersigned, by virtue of our full powers, have signed and affixed hereto the seal of our arms.

Done at St. Petersburg, December 24, 1780.<sup>2</sup>

[L. S.] COUNT PANIN  
[L. S.] COUNT JOHN D'OSTERMANN  
[L. S.] ALEXANDER DE BESBORODKA  
[L. S.] PIERRE DE BACOUNIN  
[L. S.] B. VAN WASSENAER  
[L. S.] B. VAN HEECKEREN  
[L. S.] J. I. SWAART

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 219.

<sup>2</sup>January 4, 1781, new style.

**Declaration of the States-General of the Netherlands regarding  
Their Accession to the Conventions for an Armed Neutrality  
between Russia and Denmark and Norway, and Russia and  
Sweden, January, 1781<sup>1</sup>**

We make known that, having been invited to accede, as principal contracting Parties, to the double convention concluded at Copenhagen on June 28/July 9<sup>2</sup> between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway, and at St. Petersburg on July 21/August 1, 1780,<sup>3</sup> between Her Imperial Majesty of all the Russias and His Majesty the King of Sweden, we formally certify by this present declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form, as a principal contracting Party, to the aforesaid double convention, and we bind ourselves in conformity with what has been more fully stated in the act of accession and the separate act signed on December 24, 1780,<sup>4</sup> at St. Petersburg by the plenipotentiaries of Her Imperial Majesty and by those who have been authorized by us, by all the stipulations, clauses, and articles, to which we accede entirely in their form and tenor.

We understand that Her Imperial Majesty of all the Russias and Their Majesties the Kings of Denmark and of Sweden<sup>5</sup> will declare likewise by a formal act that they have received and accepted this our declaration, and that Their Imperial and Royal Majesties will recognize us as a principal contracting Party to the double convention of Copenhagen and of St. Petersburg.

In faith whereof this present declaration, which shall be exchanged at St. Petersburg for a similar acceptance on the part of His Majesty the King of Denmark and Norway [Sweden] through the intermediary of Russia, has been given at The Hague, under the Great Seal of our States and initialed by the President of the Assembly and signed by our Clerk.

<sup>1</sup>Translation. For the French text, see Appendix, p. 657.

<sup>2</sup>*Ante*, p. 299.

<sup>3</sup>*Ante*, p. 311.

<sup>4</sup>January 4, 1781, new style. *Ante*, pp. 346, 350.

<sup>5</sup>In the copy intended for Sweden the name of that country precedes Denmark and Norway throughout the document.

**Declaration of the States-General of the Netherlands to the Belligerent Powers regarding Their Accession to the Conventions for an Armed Neutrality between Russia and Denmark and Norway, and Russia and Sweden, January, 1781<sup>1</sup>**

Article 10 of the double Convention of Copenhagen and of St. Petersburg having been communicated to the Court of London (*Versailles, Madrid*), announcing the consent of the high contracting Parties to the accession of other neutral Powers; Their High Mightinesses the Lords States-General of the United Provinces have determined to form, in concert with Her Imperial Majesty of all the Russias and Their Majesties the two Kings, her allies, a union founded on a just and reasonable system of neutrality on the sea, having for its object the maintenance of the interests and the rights of their subjects. To this end they have acceded as principal contracting Parties, by a formal act signed at St. Petersburg on December 24, 1780,<sup>2</sup> to the conventions of Copenhagen and of St. Petersburg, concluded on June 28/July 9 and July 21/August 1, 1780, between Her Imperial Majesty of all the Russias and Their Majesties the Kings of Denmark and of Sweden.

The undersigned Ambassador (*Envoy*) having the honor to communicate this act to the Minister of His Britannic (*Most Christian, Catholic*) Majesty requests him to be good enough to bring it to the knowledge of the King his master. His Majesty will find therein a renewed expression of the principles of impartiality, which Their High Mightinesses have constantly professed and which are so in accord with the sentiments of justice and equity which have decided them to adopt the only means calculated to protect their subjects from the losses, vexations and dangers, to which they, their commerce, and their navigation might be exposed as an unhappy consequence of the naval war which is disturbing the tranquillity of Europe.

Their High Mightinesses are pleased to believe, because of the friendship and spirit of justice with which His Britannic (*Most Christian, Catholic*) Majesty is animated, that he will recognize the equity and peaceful intention of such a measure and that he will see to the execution of the orders which he has had issued to all the officers and commanders of his war-ships, as well as to his private ship-owners, to

<sup>1</sup>Translation. For the French text, see Appendix, p. 658. The same declaration (*mutatis mutandis*) was sent to the belligerent Powers by the Empress of Russia, the King of Denmark and the King of Sweden.

<sup>2</sup>January 4, 1781, new style. *Ante*, p. 346.

respect the rights and liberties of neutral nations, just as Their High Mightinesses have provided that the subjects of the Republic shall not engage in illicit commerce to the detriment of any of the Powers at war.

**Extract from the Register of Resolutions of the States-General of the Netherlands, regarding the System of Armed Neutrality, January 12, 1781<sup>1</sup>**

*January 12, 1781.*

Upon the proposition of the honorable deputies of the Provinces of Holland and of West Friesland, and upon the special order of the States-General of the said Provinces in their Assembly, after due deliberation it has been determined and agreed upon, that to the Ministers Plenipotentiary of the States-General at Petersburg, as well as to the Envoys and Ministers von Lynden, Bosc de la Calmette, at the Courts of Stockholm and Copenhagen, instructions shall be sent, there and as they may deem most convenient, to make substantial notification to the effect that the States-General by resolution of November 20, last,<sup>2</sup> whereof they were notified in due time, joined the alliance for the maintenance of the rights of neutrality so worthily established by Her Imperial Russian Majesty, and trust that the alliance is thereby perfected, and that therefore, the convention between the Ministers of the Imperial Russian Majesty, and Their Majesties the Kings, to whose Courts each of them is accredited, and the Ministers of the States-General sent in special mission to Petersburg for that purpose, is concluded and signed, and that the ratifications of the conventional Powers will not fail, but be speedily executed; that at least there will be no difficulty encountered to fulfil the engagements made with the Ministers Plenipotentiary of the States-General; that from the moment when the State should have delivered its declaration to the belligerent Powers, the State should be regarded as having joined the convention, and therefore, from that moment share its advantages, if any untoward event should arise between the time of the declaration and the conclusion of the convention.

<sup>1</sup>Translation. Dutch text, Martens, *Recueil*, 2d ed., vol. 3, p. 223.

<sup>2</sup>*Ante*, p. 325.

That their States-General depend upon, and have perfect faith in the power, generosity, and loyalty of Her Imperial Russian Majesty and of Their Royal Majesties and other high allies, for the fulfilment of their engagements and vindication of their own honor, for the execution of the enterprise so worthily undertaken by them to strengthen and safeguard the neutral nations of Europe against the attacks of the belligerent Powers, and persevering in that trust have not hesitated in overcoming their scruples as to the possible results consequent upon the accession to the alliance concluded between the high Powers; and aware of the results which the forwarding of the declaration to the belligerent Powers demanded in the premises might have for the Republic, the States-General have not hesitated to resolve in effect to join the alliance and to forward the declaration, the sending of the copies of the declarations of the States-General to the belligerent Powers having been notified by their Ministers to Her Imperial Russian Majesty and to Their Royal Majesties.

The results have fully justified the exact expectations of the States-General, for His Majesty of Great Britain was greatly displeased with the act of the States-General, and from the moment that His Majesty of Great Britain was informed that the resolution to join the armed neutrality was on the point of being adopted by the States-General, His Majesty of Great Britain did not hesitate to address the Republic in a most unusual way, and, without giving it the necessary time for deliberation required by the form of government and constitution of our Provinces—of which fact His Majesty of Great Britain must have had knowledge,—His Majesty demanded immediate satisfaction and punishment for a pretended offense relative to a certain disclosed act with North America, and without in any way asking for a provisional answer and expression of disavowal, without criticism of the act, and without asking for an opinion from the Department of Justice of the Provinces of Holland and of West Friesland which were concerned in the matter regarding the law of the country and the reasons which might or might not be adduced, so that in the case, the accused persons could be lawfully prosecuted, without which, neither in the realm of Great Britain, nor in the Republic, nor in any well-regulated government, any one can be prosecuted, His Majesty, who could thus have received satisfaction or could at least have stayed the threatened measures, decided to obtain independent satisfaction, attacked the Republic unawares, and hastened the offensive measures

which it pleased His Majesty to take against the Republic. And when Count van Welden on the part of the States-General came to hand Lord Stormont the said declaration respecting the right of neutrality the latter almost refused to accept it, saying that he could no longer receive him as the Envoy of the Republic because the manifesto which he had sent him,<sup>1</sup> now that the Republic was being regarded as an enemy, had meanwhile been sent to Count van Welden one hour earlier than that set by Lord Stormont the day before, upon the repeated request of Count van Welden on the same day, for an interview.

The States-General trust that, although the manifesto of His Majesty of Great Britain, by which His Majesty makes known his intention of regarding the Republic as an enemy, does not refer to the alliance for an armed neutrality, yet the entire action of the Ministry of His Great Britannic Majesty, and the time when and the manner in which the said manifesto was issued, show sufficiently that the hatred toward or for the alliance to which the States-General recently acceded is the prime reason for the explosion of the displeasure of His Great Britannic Majesty toward the Republic, and the consequences thereof are the capture of a very large number of ships belonging to its citizens and of national war-ships, even as in a publicly declared war.

When carefully examined, the manifesto, of which Her Imperial Russian Majesty and Their Royal Majesties have been informed by His Great Britannic Majesty and of which copies will be sent to the Ministers Plenipotentiary and Envoys for their information, bears evidence of enmity on account of the alliance of the Republic with Her Imperial Russian Majesty and Their Royal Majesties, though an effort has been made to conceal the fact with diplomatic rhetoric, and shows in so far as the Republic is impugned for offenses which shall justify the State in resorting to hostile attack, that the same has accepted the neutrality without considering that Her Imperial Russian Majesty and Their Royal Majesties are thereby assailed at the same time; that is, the Powers mediating between Great Britain and the Republic, to whom the treaties have been communicated and are known by them, can not be judged for having contracted a neutrality alliance with a Power which they judge not to be lawfully neutral;

<sup>1</sup>*Ante*, p. 330.

furthermore, it was known before that the Court of Great Britain means to derive its pretended right to renounce its treaty of 1674<sup>1</sup> with the Republic, and thus to seize its ships destined for one of the belligerent Powers, together with their belongings, from the pretended contradiction of the neutrality of the Republic with its engagements.

The same reason for His Great Britannic Majesty's action toward the Republic: hatred for its accession to the above-mentioned alliance, can also be seen clearly in the manifesto itself, in so far as the latter impugns the Republic for facilitating the departure of ammunition ships to France through the revocation of domestic laws. While there is no need to demonstrate the self-evident truth that up to the present no laws have been thus revoked by the Republic to facilitate such transportation, the accusation again shows that the stumbling block is found in the right of neutrality which permits the transportation by ship of ammunition to the belligerent Powers; and upon this right rests the alliance between her Imperial Russian Majesty, Their Royal Majesties and the States-General of the Netherlands, the which has been evidenced and affirmed as lawful and notified by declarations to the belligerent Powers, and from which arose the hatred toward the alliance.

At present the States-General have no intention further to discuss the said manifesto or to make answer to the same, confident that Her Imperial Russian Majesty and Their Royal Majesties are well able to appreciate it, and that their Ministers and Envoys are sufficiently familiar with both the treaties and the acts of the States-General to be able to disprove by strong verbal argumentation the reasons specified in the manifesto and to establish convincingly that from the outset of the difficulties—even by restricting the commerce of the inhabitants of its own colony, and by holding one of its governors in the West Indies accountable because of complaint lodged against him,—the States-General have shown their unwillingness to do anything to the advantage of the colonies in America and that they have constantly upheld that principle; it is therefore evident and clear that His Great Britannic Majesty's displeasure toward the Republic and the consequences thereof are to be found in the effects of the enmity due to the above-mentioned alliance, and on that account finds justification for insisting upon the true meaning of Articles 7, 8 and 9 of the alliance

<sup>1</sup>Dumont, vol. 7, pt. 1, p. 282.

with Her Imperial Russian Majesty and Their Royal Majesties; that the States-General—though they had reason to feel aggrieved because of a single act which upon the intervention of the allies was repaired,—before resorting to armed force had asked the allies to afford them help for reparation thereof, but that the States-General, having been attacked in hostile manner by His Great Britannic Majesty, because of and out of enmity for the convention with Her Imperial Russian Majesty and Their Royal Majesties, and not being in direct relations with His Majesty, have been compelled to defend themselves and to resist the attack in the same manner as they had been attacked and to meet hostilities with hostilities,—believe, if ever they had reason so to believe, that they may expect that the allied Powers will be pleased to make an actual and common cause with them and to secure for them full satisfaction, and that the allied Powers will be pleased to assume such further obligations as may be required by the circumstances; the States-General request this most earnestly and expect this help with all the more confidence, because they feel quite certain that Her Imperial Russian Majesty and Their Royal Majesties will not permit that the States-General and the Republic shall become the unfortunate victims of their trust in the generosity and the zeal of Her Imperial Russian Majesty and Their Royal Majesties for the maintenance of the right of neutrality against the power of Great Britain, especially in the present circumstances when that realm is everywhere in arms, and the States-General with the ample navigation of private individuals, and the employment of a large number of sailors are not equal to the task of operating the sea power of the Republic, small or large as it may be.

The Ministers Plenipotentiary and Envoys at the Courts to which they are accredited shall insistently and urgently request a prompt and sufficient assistance from the allies, so that the States-General may not, without their help, before and at the time of the first onslaught, have to bear the weight and force of the attack of His Great Britannic Majesty, and that in consequence they may not be exposed to the danger of becoming useless to the alliance.

They shall hold themselves ready to enter into such further engagements as the high allies might deem necessary for the furtherance of the common cause and mutual defense.

They shall endeavor to find out if there is a disposition on the part of some of the allies to place at the service of the States-General, but



for the common defense, some of their armed ships, or if there is a willingness to transfer such ships, on the basis of a suitable subsidy, to the States-General which will ever be found prepared to perfect such an arrangement, and, finding that there is such a disposition, they shall do their utmost to strengthen it, and, the sooner the better, to report to the States-General anything definite and agreeable to the great need of the Republic.

**Netherland Ordinance concerning Commerce and Navigation,  
January 26, 1781<sup>1</sup>**

The States-General of the United Provinces of the Netherlands to all those who shall see these presents or hear them read, greeting:

We announce that, the King of Great Britain having seen fit to make a hostile attack on this State without any valid reason, we find ourselves compelled to do all that can help our defense and to exercise the right which the conduct of the said King gives us to act against him in the same way as he is acting against us. And to prevent any injury from that direction, we are obliged and constrained, in so far as it lies in our power, and in so far as it can be done in conformity with the law of nations and without injury to our allies, friends, and neutrals, to deprive the said King of the opportunity and the necessary means which he might use to injure, more and more, this State and the good people of these Provinces.

That is why we have found it advisable and deemed it necessary to issue orders, as well as very severe prohibitions, to all those under our authority, and to inform and advise in a friendly manner all other nations which are in alliance with or neutral with respect to this State, and by these presents we order, prohibit, and advise respectively.

ARTICLE 1

That henceforth no one shall attempt to export from these Provinces on any vessels other than their own (or those that they may hire from the East or West Indian Companies, or other vessels that are permitted

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 276.

belonging to individuals in the service of the colonies of this State, after having obtained permission from the Admiralty, under bond of three times the value, to be verified to the satisfaction of the Admiralty Board within a certain period, proportional to the distances of the places, and to be declared on arrival at the place of destination) any arms, munitions or any other war material, fireworks, saltpeter, sulphur, refined or unrefined cannon powder. fuses, cannons, stone mortars, gun carriages, naval carriages, balls, bombs, frames, grenades, muskets, musketoons, guns, pistols, petards, powder bags, helmets, breastplates, shoulder-belts, pouches, pikes, halberds, swords, bayonets, and all other firearms or steel arms, among which are included gun-barrels, locks, and everything that is used in assembling them, horses, saddles, pistol holsters, and everything that is used in harness for horses; masts, rods, and other turned wood, oak beams and other timber for the construction of ships, sawed or unsawed, the kinds of which are specified and declared to be construction timber by our proclamation of August 1, 1747, as well as canvas, hemp, cordage, string, cables, and furthermore anchors, iron, steel, small iron and steel, all kinds of copper, metal, pitch, and tar, and also flour, wheat, oats, horse beans and pigeon beans, under penalty of confiscation, if an attempt is made to export any of the above-mentioned articles, and in addition a fine of double their value, one-third of which shall go to the informer, one-third to the officer making the accusation, and the remaining third to the State.

## ARTICLE 2

That, moreover, no inhabitant of these Provinces shall attempt to export any of the above-mentioned articles, or to send any ships from these Provinces, or from other countries, kingdoms, places or cities, directly or indirectly, to any ports, islands, cities, or places of Great Britain, or that are under the rule of the said King of Great Britain, whether in Europe or outside of Europe. That no one also, even though a foreigner and not an inhabitant of these Provinces, shall undertake to export any of the aforesaid articles from these Provinces to any of those places; all under penalty of confiscation of the said articles, and, in addition, punishment without mitigation as an enemy of the State.

## ARTICLE 3

And considering that because of the duty that requires every legitimate sovereign to defend and preserve his good subjects and inhabitants by all possible means against all acts of violence and molestation, we can not and, according to the common law and the practices of all peoples, are not obliged to allow any articles of contraband to be furnished to the said King or to his subjects by any one whatsoever; we desire by these presents to notify and seriously to request and exhort all our allies and friends, neutrals, and, in general, all peoples and nations, not to attempt until further notice to transport from any countries, kingdoms, ports, place or cities [ . . . <sup>1</sup>] of Great Britain or under the rule of the said King, either in Europe or outside of Europe, any articles of contraband, recognized as such in treaties, or, where there are no such treaties between them and us, any munitions of war or arms, artillery and its fireworks, or anything thereto appertaining, pistols, bombs, grenades, cannon powder, fuses, balls, pikes, swords, lances, halberds, helmets, breastplates, or other similar arms, as well as soldiers, horses, equipment for horses, or any other war material; since it is our intention to consider as a legitimate prize and to confiscate the aforesaid contraband goods found on board vessels in contravention of our present notice and ordinance, for transportation to the places mentioned.

## ARTICLE 4

We order, furthermore, all our inhabitants and subjects, notifying and exhorting all our allies and friends, neutrals, and, in general, all peoples and nations that desire to navigate toward any kingdoms, countries, cities, or places of this State, situated in the Orient, in the Occident, or toward the north, or that wish to sail from those regions in this direction, to choose and keep to the open sea, since it is our intention, and we so declare by these presents, that every vessel sailing along the coasts of England, or other countries, islands, or places that are under the rule of the King of England, and all vessels that happen to be in shoals or shallows, thereby not being beyond suspicion of meditating some act in violation of our ordinance and notice, when loaded wholly or partially with any of the above-mentioned articles of contraband, shall be seized and brought in by captains or other naval officers, as well as by the privateers of these Provinces, to be

<sup>1</sup>Apparent omission.

adjudicated by the counselors of the Admiralty, as set forth in Articles 2 and 3 hereof, unless the said vessels should be driven into port by stormy weather or some other great necessity and from the circumstances it should be thus interpreted and decided in this way by the aforesaid Admiralty Board.

#### ARTICLE 5

That in order to forestall and prevent any fraud that might be attempted against the present ordinance and notice, we order and command all owners of vessels and merchants who are inhabitants of these Provinces, or those who send their vessels and goods out of this country; we notify and exhort, moreover, all other persons, of whatever nation they may be or whencesoever they may come, not to load or cause to be loaded in their vessels goods, wares, or merchandise, nor to transport them or cause them to be transported in any other way than under regular ship's papers, proper passports, letters of destination, bills of lading, of advice, and of shipment, or other similar documents, as is required for loading and transportation by virtue of the laws and proclamations of the places where the goods, wares, and merchandise are loaded, for we shall consider as subject to confiscation, and now declare to be legitimate prize, all vessels that shall sail with ship's registers of more than one sovereign or regent: as well as the goods, wares, and merchandise with which they are loaded, for which there is found to be more than one letter of destination, two sets of freight invoices, bills of lading, or other documents, as well as vessels and goods which are not properly supplied with the aforesaid requisite documents.

#### ARTICLE 6

And in order that every officer and commander of a war-ship, belonging either to the State or to private owners, who have commissions from His Highness the Prince of Orange and of Nassau, in his capacity as Admiral General of these Provinces, may be assured that the vessels which he may encounter at sea, laden with any of the aforesaid contraband goods, are not bound for the aforesaid ports, cities, and places of Great Britain or other countries under the rule of the aforesaid King, the aforesaid captains shall be permitted to accost at sea all vessels against which there may be any suspicion, and require them to show their ship's registers, passports, letters of destina-

tion, and bills of lading, to prove to whom the vessels belong, where and in what place they were loaded, of what their cargoes consist, and at what point they are to be unloaded. When all these have been shown to them and when they have ascertained that the aforesaid vessels are not bound, with any of the said contraband goods, to any ports or places under the rule of the King of Great Britain, they shall permit them to pass freely; but if the contrary should, from the documents or otherwise, appear to be the case, they shall safely bring in such vessels with the goods on board, and shall take possession of all the documents that are found on board of such vessels and that have been shown to them; as well as to draw up in writing, in all due form, the declarations which the masters and members of the crew shall make with regard to the purpose of their voyage; likewise as to the character of the vessel and of its cargo, and they shall have the master sign these declarations, to be forwarded and delivered together with the documents found, the vessel itself, and its cargo to the member of the Admiralty Board, under whose authority the capturing vessel is. As to vessels under convoy, the declarations of the officers of the convoy that the vessels under their convoy are not loaded with contraband goods, according to their full knowledge thereof, must be accepted, and no further visit shall be required.

#### ARTICLE 7

It is also our intention that all the penalties herein provided shall apply to and shall be enforced against any of our inhabitants, who violate our ordinance, whether merchants, masters, or any one else, together with confiscation of the vessels and of the goods thereon belonging to the owner, as provided hereinbefore; or if they are not within reach, they shall be condemned to pay a fine equivalent to the amount, each one in his individual capacity, upon their arrival in these Provinces. Or if it should be learned and if it should be proved that they had contravened in any way our present ordinance and proclamation, they shall be considered as having been caught in the act and brought into port by our war-ships, or else seized and brought to justice in this country by other officers of the State.

#### ARTICLE 8

And in order that the execution of our present ordinance and notice may give no legitimate cause of complaint to any king, republic, prince,

power, or city, who are in alliance and union with this State, we order and expressly charge by these presents all our nautical commanders and other officers, who are commissioned, whether of the war-ships of the State or of vessels armed by private individuals on commissions of His Royal Highness, to be guided strictly by the alliances and treaties which we have made or may hereafter make with other kings, republics, princes, powers, and cities, concerning the transportation of contraband goods. To the same end, we order our Admiralty Board to notify in particular all nautical commanders, both those of the State and those of privateers armed under commissions of His Highness, to interpret properly the aforesaid Article 3, and to furnish them with extracts from the said treaties, with orders to govern themselves strictly thereby.

#### ARTICLE 9

Jurisdiction of offenses against this ordinance shall belong to the Board of Admiralty in the districts in which the violations shall be discovered, or from which the commanders who shall make the seizures sailed.

#### ARTICLE 10

In cases where the offenders are not caught in the act, but are accused thereafter, jurisdiction shall belong to the Board of Admiralty, or to the regular judges before whom they are brought in first instance. And in order that all officers and all persons in general who have at heart the welfare of the State, and who are opposed to such contraventions, may be the more attentive to the scrupulous observance of this ordinance by each and every one, and to the punishment of offenders, as an example, in accordance with the terms of these presents, the money realized through confiscation and otherwise shall be applied as it ordinarily is by the proclamations of the respective Provinces of the United Provinces, to wit: one-third to the informer, whether he is a sworn employee of the State or not, one-third to the officer making the accusation, and the remaining third to the State.

#### ARTICLE 11

As to vessels and goods that shall be seized and brought in by any war-ships of this State or by vessels sailing under commissions, because of violation of the present ordinance, and which shall be

declared subject to confiscation and lawful prize, the division shall be made according to instructions, proclamation, and ordinance which have heretofore been published or which may hereafter be published.

#### ARTICLE 12

And in order that all vessels and goods, which shall be seized and brought to these Provinces because of violations, may be delivered into the hands of the said Board, we expressly order those who shall seize them strictly to observe, and to see to it that all those whom it may concern observe the terms of our proclamation of December 1, 1640, against general pillaging and forcible capture, with the warning that the penalties provided by the said proclamation shall be severely enforced against those who may have attempted any act contrary to the aforesaid prohibition.

#### ARTICLE 13

To prevent the losses resulting from the confiscation of the aforesaid vessels and goods from falling on any one other than the offenders, and from affecting through insurance any other inhabitants of these Provinces, as well as to restrict as much as possible English navigation and commerce, we expressly order, not only that none of our inhabitants shall attempt to insure or to have insured directly or indirectly, in this country or elsewhere, any contraband goods, in any way whatsoever; nor to give or to receive any refunds for the purpose of circumventing our proclamation, either directly or indirectly, on any pretext whatever, under penalty of confiscation of the sums insured by the insurers. That the said prohibition shall apply both to insurance and to refunds, and officers who shall be convicted of having neglected this part of their duty shall be severely punished by being deprived of their positions or such other penalty as the case may require.

And in order that no one may allege ignorance hereof, these presents shall be proclaimed, posted, and published in the usual way.

Done and adopted in our Assembly at The Hague on January 26, 1781.

W. v. LYNDEN

By order of Their High Mightinesses,

FLAGEL

**British Additional Instruction to the Commanders of Merchant Ships and Vessels having Letters of Marque and Reprisals, February 15, 1781<sup>1</sup>**

An additional instruction to the commanders and officers of all our ships, and of all vessels having letters of marque and reprisals against the French King, the King of Spain, and the States-General of the United Provinces, or their subjects, or others inhabiting their territories and dominions: also against the inhabitants of our rebellious colonies in America, and all others going to, or coming from trading in, the said colonies, by virtue of our several commissions, bearing date the fifth day of August, 1778, the twenty-third day of June, 1779, the twentieth day of December, 1780, and by virtue of an Act of Parliament passed in the seventeenth year of our reign. Given at our Court at St. James's the fifteenth day of February, 1781, and in the twenty-first year of our reign.

Whereas, notwithstanding our former strict instructions to the several commanders aforesaid, that nothing be in any ways attempted against the ships, vessels, and goods of any prince or State in amity with us, or of their subjects, it hath happened that some irregularities have been committed by some of the aforesaid commanders: to prevent all such abuses of our commissions for the future, and to remove every just cause of complaint, we do hereby strictly charge and enjoin the most exact attention and obedience to our said instructions in respect to princes or States in amity with us, and their subjects, warning them and all persons concerned in said vessels, that they will be inevitably compelled to make the most complete and ample restitution and amends for any injuries which shall be proved to have been done by them to the persons or effects of neutrals, and will further incur such punishment as may be by law inflicted upon the contraveners of our orders in this behalf, and of our known regard to justice, and to the interest of all Powers, and their subjects, who are in amity with us and our dominions.

By His Majesty's command,

STORMONT

<sup>1</sup>Hennings, vol. 2, p. 105.



**Memorandum of the States-General of the Netherlands to the Court of Sweden, demanding the Support of the Armed Neutrality League in Its War with Great Britain, February 28, 1781<sup>1</sup>**

The underwritten Envoy Extraordinary from their High Mightinesses the States-General of the United Provinces, to His Majesty the King of Sweden, in pursuance of an express order from his masters, has the honor to propose to His Swedish Majesty:

That their High Mightinesses having acceded, by their resolution of the 20th of November, 1780,<sup>2</sup> to the treaty of armed neutrality, in conformity to the invitation of the northern Powers; and placing the most perfect confidence in the power, magnanimity, and fidelity of Their Imperial and Royal Majesties, for the fulfilling of their engagements, and the maintaining of their dignity, by accomplishing a work so gloriously undertaken, namely, the liberty of the seas, and freedom of navigation for all neutral nations, were not deterred by the consideration of the consequences, which that accession and declaration might be productive of to the Republic, from the part of the belligerent Powers. But their High Mightinesses have declared in favor of this accession and declaration, in replying implicitly on the sentiments of Their Imperial and Royal Majesties, whom they also acquainted in due time, of the measures taken in consequence thereof.

That the event has also justified their requisition, in regard to the British Court: since the minister of the latter, after his fruitless endeavors to thwart the accession to the alliance, took the resolution, on the first notice he had of it, to speak in a strain truly unprecedented, and ill suited to the mutual regard which the respective sovereigns owe to each other: without so much as granting to the Republic a sufficient time to consider on the matter, according to the political system of the Republic, which His Britannic Majesty is fully acquainted with: the English Minister insisted, nevertheless, upon an immediate and speedy satisfaction, and the punishment of a pretended offense, occasioned by the discovery of a negotiation with North America, without receiving as an ample satisfaction, the provisional answer, nor the formal disavowal of their High Mightinesses of a negotiation, of which (as acknowledged even by His Britannic Majesty) they had not the least share, or knowledge: of a negotiation relating to a pretended treaty, which, in itself, sufficiently denotes, from its terms, only the sketch

<sup>1</sup>*Annual Register*, 1781, p. 311.

<sup>2</sup>*Ante*, p. 325.

of an eventual treaty entered into by private persons, without being formally authorized thereto by the body of the magistrates of Amsterdam, or by the states of the Province of Holland, and much less by the States-General, whose members are alone authorized to enter into engagements in the name of the Republic.

The British Minister went even so far as to refuse noticing the resolution, by which the Province of Holland (the only one concerned) was required to deliberate, how far the laws of the country might give authority to prosecute the persons accused, and punish them; a formality, without which no punishment can be inflicted, neither in England nor in this Republic, or any other country. Nay, the said Minister went so far as to threaten, that in case of a refusal, his sovereign would adopt such means, as to procure himself that satisfaction. It was at the same time resolved to attack the Republic by surprise, and so far hasten the measures taken to begin hostilities, that Lord Stormont, making use of vain pretenses, would not so much as accept from Count Welderen the aforesaid declaration; and answered, under his hand, "That he (Stormont) could no longer look upon him as the Minister of a friendly Power, after having officially acquainted him of his King's manifesto": whilst this very manifesto (and this should be noted) was delivered into the hands of Count Welderen, only an hour before the time appointed by Lord Stormont, the preceding day, for giving him audience. That, moreover, although no mention is made in the manifesto alluded to, of the Republic acceding to the treaty of the armed neutrality (which it was of the utmost importance to pass over in silence), it nevertheless appears clearly, to the penetrating eye of Your Majesty, as well as to all Europe, if the whole proceedings are attended to, and the time and manner in which the manifesto was published, that the hatred, occasioned by the Republic acceding to the confederation of armed neutrality, is the true motive of His British Majesty's resentment, and the only one that could excite him to an open attack against the Republic, by seizing, at once, upon a great number of Dutch merchantmen, and some ships of war. Besides that the aforesaid manifesto, known to Your Majesty, sufficiently displays the cause of England's displeasure: the more so as amongst the pretenses made use of to varnish over the hostilities against the Republic, it is said, that it had taken a neutral part: without the Cabinet of St James's deigning to observe, that such answer was insulting to the neutral Powers who are perfectly acquainted with the treaties now

in force between England and the Republic; and that the latter could not be charged with an intention of entering into an alliance with a Power not lawfully neuter in the present contest, and without observing that this liberty of negotiating had been put beyond all doubt, by England itself; since by suspending, in April, 1780,<sup>1</sup> the effects of the treaty passed in 1674, the English having manifested their intent of looking henceforth upon the Republic as a neutral Power, no ways privileged by any treaty.

That for the reasons hereabove mentioned, the animosity of Great Britain appears still more conspicuous, from the ill-grounded reproach contained in the said manifesto against this Republic, that their High Mightinesses had encouraged the exportation of naval stores for France, by suspending the usual duties on those commodities, whilst it is known to all the world, that such a suspension has never taken place, and that the Republic had a right to export those commodities, not only agreeably to the treaty in 1674, but also in conformity to the principles laid down by the neutral Powers in the convention of armed neutrality. That consequently it would be needless to enter any farther into the merits of the said manifesto; as His Swedish Majesty has it in his power to appreciate himself its value, and must, moreover, be fully persuaded that the line of conduct pursued by their High Mightinesses since the beginning of the troubles with America, is an evident proof, that they have never favored or countenanced the revolted colonies; witness the many partial condescensions in favor of England, which were merely gratuitous on the part of their High Mightinesses, by circumscribing the trade within their own colonies; by refusing to grant the protection of their convoys to vessels laden with ship timber; and by recalling the Governor of St. Eustatia on some ill-grounded complaints of the British Ministry: condescensions which have been rewarded by the attack and seizure of the convoy of Count Byland; by a violation of the territories of this Republic, and by the taking by force some American vessels from under the very batteries of the island of St. Martin.

That Their High Mightinesses having thus faithfully adhered to the system of moderation, it is evident that the resentment of His Britannic Majesty arises merely from their accession to the treaty of armed neutrality; and that, consequently, Their High Mightinesses are fully authorized to claim the performance of the conditions stipulated in the

<sup>1</sup>See the declaration of April 17, 1780, *ante*, p. 281.

Articles 7, 8, and 9 of the treaty of armed neutrality, which form the basis of that union and alliance contracted between Their Imperial and Royal Majesties and the Republic. That therefore no obstacles can hinder or delay the fulfilling of the engagements contracted by virtue of the said confederation, of which the Republic ought to be considered as a member from the very moment in which their High Mightinesses acceded to the same resolution at The Hague; and dispatched their declaration, in conformity to the said accession and convention, to the belligerent Powers.

That if Their High Mightinesses had to complain only of a single act of offense, or an attack committed against them, which was likely to be redressed by the friendly interposition of their allies, they would have claimed their intervention rather than have recourse to arms; but as their High Mightinesses find themselves actually and suddenly attacked in an hostile manner by His Britannic Majesty, in consequence of, and from mere resentment of the above-mentioned alliance, they find themselves under the necessity of repelling force by force, and to return hostilities for hostilities; being fully persuaded that the allied Powers will not hesitate to make this their common cause, and to procure to their Republic due satisfaction and indemnity for the losses occasioned by an attack equally unjust and violent; and that the said Powers will moreover, in conjunction with the States-General, take such farther measures, as the exigences of the present circumstances may require. This Their High Mightinesses solicit with great earnestness, and rely upon it with so much more confidence, as they are firmly persuaded, that the generous and equitable sentiments, which actuate Their Imperial and Royal Majesties, will not suffer them to let the Republic fall a victim to a system of politics, not less glorious than founded in equity, and established for the security of the rights of neutral nations: and especially as the Republic, if left singly exposed to the iniquitous and violent attacks of England, would hardly be able to cope with that overbearing Power, and thus run the hazard of becoming totally useless to the said confederation.

For these reasons, the underwritten Envoy Extraordinary, insisting on the motives urged here above, and fully persuaded that the ratifications of the treaty signed at Petersburg will take place as soon as possible, has the honor, in the name and by express order of his masters, to claim the performance of the engagements stipulated in the Articles 7, 8, and 9 of the said treaty, and to require, in virtue thereof, a speedy

and adequate assistance from His Swedish Majesty, whose noble and equitable sentiments, acknowledged by all Europe, will not permit him to abandon the complete establishment of a system worthy the highest praise.

The friendship and affection of Your Majesty towards their High Mightinesses, leave them no doubt of Your Majesty's willingly granting the assistance which they now claim, and also promise to the underwritten Envoy a speedy and satisfactory answer, which he solicits the more anxiously, as every moment's delay may be attended with heavy and irreparable losses to the Republic.

D. W. VAN LYNDEN

STOCKHOLM, *February 28, 1781.*

**Memorandum of the Court of Sweden for the Court of Russia concerning the Status of the Netherlands as a Belligerent and the Effect upon the Armed Neutrality League, February 28, 1781<sup>1</sup>**

When the Republic of the United Provinces of the Netherlands resolved to take part in the armed neutrality by its accession to the maritime conventions of the northern Powers, it was enjoying complete neutrality, and there was no obstacle to the accomplishment of an undertaking which was carried to its perfection by an act of accession and acceptance, signed at St. Petersburg on December 24, last, old style.

By this act the Republic bound itself to the common cause of neutral Powers, and acquired as such rights to the assistance of the other Powers, with which it was to share the obligations and advantages, in conformity with the terms of the conventions concluded during the past year between Sweden, Russia, and Denmark.

But the Republic was unable to maintain very long the status in which it had contracted its engagements. England declared war on it and forced the Republic to leave the class of neutral Powers and to take its place among the belligerent Powers. All this took place with such marvellous rapidity that the Ambassadors of both nations

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 235.

were recalled, letters of marque despatched, and several Dutch vessels taken before the news of the accession concluded at St. Petersburg reached The Hague.

In such extraordinary state of affairs, it is essential that the three Crowns of the north carefully consider the nature of their engagements with respect to the Republic, and decide the question in close union and concert.

The system adopted by these Powers is a system of perfect neutrality. It is only by following this system that they have the right to carry on their commerce freely, that they have bound themselves to protect it and mutually to uphold it. From this point of view they have fixed the obligations and the assistance which they mutually owe each other; their naval armaments are fitted out accordingly and are not intended to take the offensive against any one. The warships of a neutral nation, the obligations and advantages are the same on all sides; but it is not the same with regard to a nation at war. Measures can not be concerted, nor can they act in common with such a nation without overstepping the bounds prescribed by a strict neutrality, without upsetting the system upon which their union and their engagements are founded.

In spite of so marked a difference between the position of the three Crowns of the north and that of the Republic of Holland, the latter has addressed the former by memoranda transmitted to the Courts of Stockholm, St. Petersburg, and Copenhagen, in which memoranda the States-General of the United Provinces demand prompt and effective assistance from the three Courts by virtue of the accession of the Republic to the conventions of St. Petersburg and of Copenhagen, and by virtue of the engagements therein contained.

The principal ground on which the Republic bases its demand consists in a combination of the steps marking the conduct of the Court of London. It believes that these steps clearly show a determination not to allow the Republic to accede to the conventions of the northern Powers. It is because of enmity towards this accession that the Republic has been dragged into the war, and therefore, in accordance with Articles 7, 8 and 9 of the said conventions, the Powers which accepted this accession must come to the aid of the Republic.

In view of the extraordinary and violent action of Great Britain toward the Republic, in view of the extreme care with which Lord Stormont prevented the declaration of the States-General from reach-

ing him before the rupture was announced to Count van Welden, in view of all that preceded and followed this event, it is impossible to deny the motive which actuated the Court of London. But that reason was not given in that Court's manifesto; it mentions only acts previous to the resolution itself of the States-General with regard to its accession; and Article 6 of the conventions of Petersburg and of Copenhagen provides that the obligations of the contracting Parties do not include matters which arose before the signing of the said conventions; that is to say, that they can have no retroactive effect.

The three Crowns of the north are therefore free to choose between adopting the reasoning and the consequences set forth by the States-General, or to accept the reasons announced in the declaration of war, which the Court of London has had published. In the first case, it will be necessary to take part in the war in favor of the Republic; in the second, they can, if it is deemed advisable, consider the Republic's quarrel as foreign to the cause of neutrals and declare that the said demand had its origin in acts antedating the former's accession; but both of these lines of action appear to have great drawbacks. In the first case, it would be necessary to renounce the advantages of neutrality, the glorious aims they had in mind when they formed the maritime association; it would be necessary to fling themselves into all the horrors and to suffer all the losses which are the natural consequences of war. In the second case, they would be exhibiting to the whole world a spectacle of utter weakness, and their absolute desertion of a State with which they fear to bind themselves by formal engagements.

There remains between these two extreme courses a middle course, or to speak more accurately, there is an expedient, and it seems advisable to begin with this. It remains further to see just where this expedient may lead and what its effect will be. This expedient would seem to consist in a declaration which the three Crowns of the north would consider themselves as authorized to have delivered to the Court of London, the terms of which should be decided upon among themselves, and by which His Britannic Majesty would be informed that the Republic has just acceded to their maritime conventions; that they regard the Republic, by reason of its accession, as an ally, having the same cause to uphold and the same rights to defend; that the three Crowns of the north have no desire to sit in judgment on the reasons which induced His Britannic Majesty to declare war on the Republic.

but that they acknowledge themselves to be sincerely interested in the happiness and welfare of that State; that because of these sentiments the allied Courts hope that His Britannic Majesty will see fit to open a way for reconciliation and settlement between himself and the Republic; that the three Crowns would be glad to use their good offices to terminate the differences amicably; that they would consider themselves as performing a service essential to humanity, if they could make this reconciliation general, and that in the meantime they hope that both England and the Republic may see fit to make a beginning by ceasing hostilities and by restoring matters to the status that existed before the rupture. According to the agreement reached, this step can be taken either verbally or in writing, but separately, by the Ministers of the three Crowns residing in London. They should also decide among themselves as to the time when these common representations should be made, in order to give their efforts more weight and greater force; and if their language is supported by the naval armaments, which the Crowns of the north are now making ready, it is believed that England will reflect somewhat seriously thereon. At any rate, the dignity of our Courts would seem to require that they do something in favor of the Republic which is considered as their ally, and it is no less necessary that our action should show to Europe the reasons, the moderation, as well as the firmness which have characterized the conduct of our Courts up to the present time.

It can not be foreseen whether the English Ministry will be willing to enter into negotiations, or whether it will merely pretend to be willing; but in any event, the respective Ministers should at the same time be instructed not to depart from the armistice proposal, nor from the proposal that the Republic shall in the meantime enjoy freedom of commerce; in default of which they can reply that they are not authorized to listen to proposals by England; but they will receive the proposals of that Court *ad referendum*, if such a condition is granted them. The three Crowns of the north will consult with the Republic concerning the matters to be submitted, or they will reduce the whole to what they consider just and reasonable; and they shall strive by common action to persuade both of the interested Powers to accept these conditions.

If in the course of such a negotiation there should be an opportunity to bring together the other belligerent Powers, this opportunity shall be eagerly seized and an effort shall be made to bring about a general



pacification, establishing on the conclusion of peace the general maritime code for neutrals, adopted by our Courts, the universal establishment of which will meet the wishes of the whole world and will elevate the Crowns cooperating therein to the highest point of glory.

STOCKHOLM, *February 17, 1781*.<sup>1</sup>

**Extract from a Letter of Count Panin, Russian Minister for Foreign Affairs, to H. Sacken, Minister to Copenhagen, regarding the Status of the Netherlands as a Belligerent, 1781<sup>2</sup>**

First, That, after the ratifications were exchanged by the Russian Minister, the Swedish Envoy, and the Chargé d' Affaires of Denmark, orders have been given to the Empress's Ministers at Madrid and Paris, to deliver, in conjunction with the ministers of Denmark, Sweden, and Holland, the note agreed on to declare the accession of the Republic of Holland, in the same manner that was observed with the two conventions of Copenhagen and Petersburg.

Secondly, That M. Simolin is charged to execute the same commission with the Ministers of Denmark and Sweden, and afterwards to add, either verbally, or in writing, if the English Ministry should demand it, that, on account of the hostilities that have broken out between the Crown of Great Britain and the Republic of the United Provinces, the Empress has ordered her Admiralty to consider the Republic of Holland as a neutral Power with respect to the two Courts of Bourbon, and belligerent with regard to England, as the motives published by the latter, that gave rise to the hostilities, are entirely foreign to, and have nothing common with, the convention: That she is convinced that this step is received by the Court of England as a new proof of her impartiality, and of the innocence of her alliance, which has no other end but the protection of commerce and the rights of neutral nations, and which neither she nor her allies mean to change into an offensive measure, as long as neither she nor they are forced to do so by a hatred towards their principles, or by effectual attempts to counteract them: That the Empress did likewise flatter herself, that the Court of London, in consideration of her good-will to finish the differences that are arisen between it and a power that was, for so long a time, its friend and ally, would do justice to the friendship of

<sup>1</sup>February 28, 1781, new style.

<sup>2</sup>*The Secret History of the Armed Neutrality*, pp. 114, 220.

the Empress, and remove all suspicions, as if, among the motives of the rupture with Holland, the principal one had been the eagerness of the Republic to join the alliance of the neutral Powers. The orders delivered to the Imperial Admiralty, together with the separate article, are to the following purport:

First, All the Dutch merchant ships are to be treated by the squadrons of ships of war and separate frigates, on the same footing with the Danish and Swedish vessels, according to the order of the 19th October, 1780, because the Republic is actually become a principal and immediate party in all the rights, prerogatives, and obligations of the two maritime conventions of Copenhagen and Petersburg.

Secondly, This general rule has, however, its exceptions, on account of the war between the Republic and Great Britain, which attacked it before its signing the act of accession to the two conventions, alleging, for this rupture, reasons that have no connection with the convention.

Thirdly, In consideration of this important event, where the neutrality does no more exist, neither the Empress, nor her allies the Kings of Sweden and Denmark, are by any means obliged to enter into an effective defence of the Dutch navigation against the English.

Fourthly, On the other hand, this engagement subsists, in all its extent, against the French and Spaniards, with whom the Dutch have conventions and stipulations at full length concerning prohibited goods, which must also very naturally serve as a rule for the conduct of the ships; for which end, a copy of these conventions has been delivered to the Admiralty, together with other naval papers, that prove the property of Dutch vessels: and,

Fifthly, A copy of the separate explaining article concluded between the Courts of Denmark and England, has in like manner been delivered to the Admiralty for its information.

**Rescript of the Empress of Russia to Count Moussin Pouschkin,  
Her Minister to Sweden, concerning the Status of the Netherlands as a Belligerent and the Effect upon the Armed Neutrality League, 1781<sup>1</sup>**

Your reports and the communications of Baron Nolken, the Swedish Minister, informed us at approximately the same time both of

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 240.

the disposition of the Court of Sweden with regard to the war which has broken out between the two maritime Powers and of the desire of His Swedish Majesty to learn our own sentiments on this subject. Accustomed as we are to reply in kind to the confidence of our allies, we are still less inclined to deviate from this rule in the present circumstances, in which consideration for our respective engagements with regard to armed neutrality must elicit in the same degree our attention and our interest. Therefore, you are authorized to speak confidentially with Count Scheffer, so that he may inform his master, telling him that as soon as we learned of the sudden departure of the Duke of York from The Hague, we hastened to make the strongest kind of representations to the Court of London, to prevent it from entering upon active hostilities. We were then ignorant of the fact that hostilities were to follow immediately upon the departure of its Ambassador. Being convinced of this fact a few days later and realizing the futility of any step to prevent hostilities, we turned our attention to new measures better adapted to the times and circumstances, which would be capable of extinguishing the sparks of war at the outset. We were led to this course by a twofold reason: the thought of humanity suffering from the shedding of innocent blood, and the interests of neutral nations with regard to their commerce with belligerents. Although, after the formal request of the King of England for our mediation, conjointly with the Emperor of the Romans, to bring about peace between him and the Courts of France and Spain, there seemed to be some hope for opening peace negotiations, nevertheless, as time was required to discuss the matter with the two Crowns and to receive their mutual consent, we have deemed it advisable to find a shorter way to reconcile England and Holland and have offered our separate mediation<sup>1</sup> for that purpose. It was our intention by this action to prevent in this reconciliation the discussion of any subject that is foreign to them, especially the question of the independence of the Americans, which would have caused the chief difficulty. The States-General received our offer with gratitude,<sup>2</sup> and were eager to take advantage of it, as you will see from the enclosure herewith. England, on the contrary, declined postponing its reconciliation with the Republic until the general peace

<sup>1</sup>Proposed in a memorial presented to the States-General and to Great Britain on March 3, 1781. *Annual Register*, 1781, p. 310.

<sup>2</sup>*Ibid.*

negotiation, under the joint mediation of the two Imperial Courts.<sup>1</sup> When that takes place, we shall not fail to exert our own efforts in favor of the Republic of Holland as well as to interest His Majesty the Emperor in its behalf, in order that it may be included in the general pacification. After having given assurances to the States-General, we promised them at the same time to confer amicably with our allies with a view to a further common and unanimous effort with the Court of London, to bring it to a moderate course and to the love of peace.

We hesitated the less to give these assurances to their High Mightinesses, because we noted in the memorandum of February 17,<sup>2</sup> communicated by Baron Nolken, a copy of which is enclosed herewith for your information, a decided determination on the part of His Swedish Majesty to follow a similar course. The entire contents of this memorandum show, on the one hand, the profound penetration of that Prince, and, on the other hand, a point of view in perfect accord with ours. In truth, the time and the circumstances in which Great Britain has attacked her old ally, the Republic of Holland, indicate sufficiently that the real cause of her aggression lies in the accession of the States-General to our maritime conventions, the more so because Holland thereby protected the navigation and commercial industries of her subjects, the greater part of which was carried on with the enemies of England.

But, on the other hand, it is no less true that the actual rupture preceded the formal accession of their High Mightinesses to the conventions of Copenhagen and Petersburg, and that the reasons set forth antedate and are foreign to the cause of the allies of the armed neutrality. In the first part of this argument, Articles 7, 8, and 9 are entirely favorable to the Dutch; but Article 6 frees us, in terms no less clear, from the duty of participating in their war with England. So essential a difference in the stipulations of these conventions leaves the three allied Courts free to follow the course that is most advantageous and the most in harmony with their interests.

There could be no more judicious or wiser appraisement of the delicacy of the decision to be made than that adopted in the Swedish memorandum. The drawbacks on each side were discussed and shown in their true light, with an indication of the best way to avoid

<sup>1</sup>*Ibid.*, p. 315.

<sup>2</sup>February 28, 1781, new style. *Ante*, p. 370.

them. In admitting this method—that is to say, the observance of neutrality as the rule of conduct for the three allied Crowns in the new war between maritime Powers,—we did not fail to inform at once the Courts of Stockholm and Copenhagen of the orders which we had transmitted to our commanding officers at sea to regard the Republic of the United Provinces as a neutral Power with respect to the two branches of the House of Bourbon, and belligerent with respect to England. In calculating the time, we shall expect to hear soon from you and from the Councilor of State, Mr. Sacken, that the Kings our allies have likewise given similar orders in their States, so that all our actions and all the steps that we take shall be everywhere entirely uniform in all respects, and bear witness to the close union among us, which in the centuries to come must justify this beneficent system of neutral merchant navigation.

After having taken the measures that we owe to the welfare of our own States before all foreign interests, we shall not fail, as we have said heretofore, to employ in favor of the Republic of Holland all means compatible with this paramount duty. Consequently we willingly give our support to the idea of His Swedish Majesty that suitable representations be made at the Court of London in the name of the three allied Courts. In the Swedish memorandum there is question of a declaration, but a declaration might by its very nature carry us beyond our intentions, while a mere verbal hint, expressing the same views with the same force, can bind us in no way against our will and desire. This observation, as simple as it is essential, will not escape Count Scheffer's sagacity, with whom you are to confer as to the wording of these representations, as to the time when they shall be made at London, and as to the manner in which our respective Ministers at that Court shall make them.

We should not have placed any obstacle in the way of the adoption of the very wording proposed in the above-mentioned memorandum, since we found it as moderate as it was in keeping with the purpose in view, if circumstances, which have now become well known to the Court of Stockholm, did not seem to require certain changes. To this end, you will find hereto annexed a new draft of the representations,<sup>1</sup> which you will bring to the knowledge of Count de Scheffer, telling him that in our opinion, in order that they may be more readily

<sup>1</sup>Not printed in Martens.

understood by the English Ministry, they might be delivered in writing, on condition, however, that they be regarded as merely a verbal hint. We shall not object if the Court of Sweden or the Court of Denmark, for reasons of their own, should make use of a different wording or of a different style. It is sufficient if the substance is the same, and if on that account the English Ministers pay greater attention to this salutary action on the part of the three sovereigns in concert.

The speeches and the conduct of these Ministers indicate plainly enough that nothing short of the fear of involving their country in a war with all Europe and of being taxed with personal responsibility therefor will induce them to listen to reasonable terms of peace. To make them more tractable, it would doubtless be well to keep this fear alive in them. There is a means of accomplishing this which is as efficacious as it is inexpensive in the fact that the sovereigns hold a considerable portion of their naval forces armed and ready for action. Let the Swedish and Danish squadrons cruise for a time beyond the Sound, and we for our part shall keep a squadron in the Mediterranean and another in the Arctic Ocean, as a defensive measure, following the example of the preceding year against foreign privateers. And as, to assist this twofold action, our squadrons which passed the winter of last year at Leghorn and at Lisbon, are to return immediately or have already returned to the Baltic, we shall thus present at the same time very respectable armaments in these different seas. The possibility of the Russian, Swedish, and Danish squadrons meeting at the same point immediately on the orders of their sovereigns will doubtless have its effect on all the belligerent Powers and will at the same time ensure the safety of the merchant navigation of our respective subjects. Therefore such a joining of forces, even before it is effected, will secure to the three Courts a very great and a very real advantage. In communicating a summary of this rescript to Mr. Sacken, we enjoined him to discuss its contents with the Danish Minister and to inform us without delay of the result of their conference. He has orders to inform you directly, so that as much time as possible may be gained in putting into execution concerted and unanimous measures, to be decided upon among us, and so that we may be in a position to give our Minister at London necessary instructions, which shall be sufficient together with those that our allies will give to their Ministers at the same Court. We enclose herewith a copy of the

rescript sent to the said Mr. Sacken.<sup>1</sup> You will bring it to the knowledge of the Swedish Minister, and you will insist in your conversation with him upon the necessity of his Court's entering, on its part, into direct communication with the Court of Copenhagen, also for the purpose of saving time. As it is far from our intention to embarrass, in a common cause, the will and intentions of the Kings, our allies, you will not fail in your conversation with the Swedish Minister to discuss with him the sentiments of his own Court, and to receive *ad referendum* all proposals that he may submit, assuring him in advance that we shall consider them with all due respect and deference.

**Counter-Manifesto of the States-General of the Netherlands regarding Relations with Great Britain, March 12, 1781<sup>2</sup>**

If ever the world's annals have furnished an example of a free and independent State hostilely attacked in the most unjust manner and without the least vestige of justice or equity by a neighboring Power long allied and closely bound to it by ties of interests in common, that State is without dispute the Republic of the United Provinces of the Netherlands, which is now in such a situation with respect to the King of Great Britain and his Ministry.

At the very beginning of the troubles between that kingdom and its colonies in America, Their High Mightinesses, though not obliged to take any part therein, had formed the steadfast and invariable design to adopt and to follow, with regard to these troubles, a system of the most perfect and scrupulous neutrality. And when these same troubles afterwards resulted in a war which extended to several other Powers and spread to many quarters of the world, Their High Mightinesses constantly observed and followed this same system, while at the same time they have not failed on more than one occasion to give, with respect to very vital matters, the most convincing evidence of their sincere disposition to satisfy His Majesty's desires, in so far as

<sup>1</sup>*Ante*, p. 374.

<sup>2</sup>Hennings, vol. 1, p. 73. For the manifesto of Great Britain, see *ante*, p. 330.

they were able to do so without deviating from the rules of impartiality and without compromising the rights of their sovereignty.

It was to this intent and purpose that Their High Mightinesses, in the first instance and at the first request of His Britannic Majesty, caused to be published the most explicit prohibitions against the transportation of munitions of war to His Majesty's colonies in America and against all fraudulent trade with those colonies; and in order that these prohibitions might be more effectively executed, Their High Mightinesses did not hesitate to adopt additional measures which greatly limited and obstructed the navigation and commerce of their own subjects with the State's colonies in the West Indies.

It was, moreover, to this same intent and purpose that Their High Mightinesses sent the most precise orders to all the governors and commanders of their colonies and their establishments, as well as to all the commanding officers of their war-ships, so that they might take care to do nothing with respect to the flag of the American Congress that might legitimately be interpreted as a recognition of the independence of the aforesaid colonies.

And it was likewise and above all to this intent and purpose that Their High Mightinesses, having received a memorial, which was presented to them by the Ambassador of England, containing the most serious complaints against the Governor of St. Eustace, saw fit to consider this memorial, although it was couched in language not in keeping with the regard that sovereign Powers owe to one another. This was soon followed by the recall of the said Governor, whom Their High Mightinesses obliged to account for his conduct and whom they did not permit to return to his residence until he had cleared himself of all the charges brought against him, by the submission of exculpatory evidence, a copy of which was sent without delay to the Ministry of His Britannic Majesty.

It was by means of these measures that Their High Mightinesses, having always been most anxious to avoid giving His Britannic Majesty the slightest cause for displeasure, have constantly striven to maintain and cultivate friendship and harmony.

But His Britannic Majesty's conduct toward the Republic has been the very opposite. The troubles between the Courts of London and of Versailles had scarcely begun when the ports of England were filled with Dutch ships unjustly seized and detained. These vessels had sailed, relying on treaties, and were not laden with any goods



other than those which the treaties expressly declared to be free and permissible. Free cargoes felt the severity of the law of an arbitrary and despotic authority. The Cabinet of St. James, recognizing no other rules than an alleged right of temporary convenience, saw fit to appropriate these cargoes for the Crown by forced sale and to use them for the benefit of the King's navy. The most energetic and serious representations on the part of Their High Mightinesses against such proceedings were useless, and an appeal in the strongest manner to the treaty of commerce existing between England and the Republic was in vain. By this treaty the rights and liberties of a neutral flag were clearly defined and stated. The subjects of Great Britain had enjoyed in full the advantages of this in the first and only instance that it pleased the Court of London to remain neutral while the Republic was at war. Now, in the contrary case, that Court could not without the greatest injustice refuse the Republic enjoyment of the same advantages; and just as His Britannic Majesty had no right to nullify the beneficial effect of this treaty with respect to Their High Mightinesses, so was he unwarranted in attempting to swerve them from the neutrality which they had embraced and to force them to plunge into a war, the cause of which lay in rights and possessions of His Britannic Majesty beyond the scope of defensive treaties. Nevertheless it was this treaty which His Majesty, from the beginning of the troubles with the Crown of France, did not scruple to infringe and violate. The contraventions and infractions of this treaty on the part of Great Britain and the arbitrary decisions of the courts of justice of that Kingdom, which were in direct contradiction with the express provisions of the said treaty, became more numerous from day to day. The merchant ships of the Republic were the innocent victims of cumulative exactions and acts of violence on the part of English ships and privateers. They did not stop there. Even the State's flag was not spared, but was openly insulted and outraged by the hostile attack of the convoy under the command of Rear Admiral Count van Bylandt. The most emphatic representations on the part of the State to His Britannic Majesty were of no avail. The vessels seized from this convoy were declared to be lawful prize, and this insult to the flag of the Republic was soon followed by an open violation of its neutral territory both in Europe and in America. Two examples will suffice. At the Island of St. Martin vessels belonging to His Britannic Majesty attacked and seized by force several vessels which were

lying in the roadstead under the guns of the fortress, where, according to the inviolable law of nations, they should have found a safe refuge. The insolent acts committed by an English armed ship on the coast of the Republic near the Island of Goedereede furnish the second example of such violations. These insolent acts were carried so far that several of the inhabitants of the island, who happened to be on its shores, where they had every reason to believe themselves safe from insult, were exposed by the fire of this ship to the gravest danger, which they were able to escape only by withdrawing to the interior of the island. For these unheard-of acts, the Republic, in spite of its well-founded representations, has been unable to obtain the slightest satisfaction.

While matters were in a situation which left their High Mightinesses one of two alternatives—either to witness the complete annihilation of the navigation and commerce of their subjects upon which depends the prosperity or the ruin of their subjects, or to take action against their old friend and ally—the magnanimous heart of Her Majesty the Empress of Russia led her to invite the Republic, with as much affection as humanitarian impulses, to take the most equitable measures, which were entirely in conformity with the treaties existing between them and other Powers, in order to defend and to maintain conjointly with Her Imperial Majesty and the other Powers of the north the privileges and immunities which the law of nations and the most solemn treaties ensure to a neutral flag.

This invitation could not but be extremely agreeable to Their High Mightinesses, since it offered them a means of placing the protection of their subjects' commerce on the most solid foundations and opened the way to ensuring their independence against infraction without in any manner derogating either from the alliances contracted with His Britannic Majesty or from those contracted with the other belligerent Powers.

But this is the very means of which the Court of London has attempted to deprive the Republic by going to the most extreme lengths, recalling its Ambassador, publishing a manifesto of pretended grievances, and granting letters of marque and permitting pretended reprisals against the State, its subjects, and their property; by all of which acts that Court has shown only too well its design long since formed of laying aside the vital interests which united the two nations

and of breaking the bonds of their ancient friendship by waging a most unjust war against the State.

It will not be necessary to refute at length the reasons and pretended grievances alleged in this manifesto to convince every impartial man of their groundlessness. As regards His Britannic Majesty's offer to hold friendly conferences, it is sufficient to point out in a few words that nothing but the aforesaid marine treaty could form the subject of such conferences; that the provisions of this treaty, worded most explicitly, could not be subject to any doubt or ambiguity; that this treaty gives neutral Powers the right to carry freely to the ports of belligerent Powers all kinds of naval munitions; that the Republic having no other aim and desiring nothing more from His Britannic Majesty than the tranquil and peaceful enjoyment of the rights stipulated by this treaty, a point so absolutely clear and incontestably right could not be made the subject of negotiation or of a convention derogatory to this treaty, inasmuch as Their High Mightinesses could not obtain therefrom nor show themselves disposed to renounce voluntarily rights which they had justly acquired or to waive these rights out of regard for the Court of England—a renunciation which, being advantageous to one of the belligerent Powers, would have been incompatible with the principles of neutrality, and by it Their High Mightinesses would have exposed the security of the State to dangers from another quarter, which they were obliged carefully to avoid—a renunciation, moreover, which would have done irreparable injury to the Republic's commerce and navigation, its principal support and the source of its prosperity, since the different branches of commerce are so closely interlocked that they form an entity from which it is impossible to cut off so considerable a part without causing the decline and ruin of the whole not to mention the fact that, while Their High Mightinesses were raising just objections to the proposed conferences, they none the less moderated and tempered by a provisional resolution the effective exercise of their right.

As regards the aid demanded, Their High Mightinesses cannot conceal the fact that they have never been able to understand how His Britannic Majesty could have believed himself warranted with the slightest semblance of justice or equity in insisting upon the aid stipulated by the treaties, when on a former occasion he had not lived up to the obligation imposed upon him by his treaties with the Republic. Their High Mightinesses have been no less surprised to perceive that,

while the troubles in America and their direct consequences could not by virtue of any treaty concern the Republic, and though the aid had not been demanded until after the Crown of Spain had increased the number of belligerent Powers, His Britannic Majesty nevertheless took occasion on that occurrence to insist upon his demand earnestly and ardently, as if His Majesty had a right to claim and maintain that the mere fact that war had broken out between him and another State was sufficient to compel the State to grant at once, and without first looking into the facts, the aid stipulated. The Republic, it is true, had bound itself by treaties to assist the Kingdom of Great Britain whenever that Kingdom should be attacked or menaced with an unjust war. Furthermore, in such an event the Republic was obliged to declare war on the aggressor, but never did Their High Mightinesses give up the right, which follows as a necessary consequence from all defensive alliances and which allied Powers incontestably possess, to investigate first and before granting aid or taking part in the war, the origin of the dissensions that have arisen and the nature of the differences which have caused them, as well as to examine and weigh carefully the grounds and reasons which may establish the existence of a *casus fœderis* and which must form the basis of the justice and legitimacy of the war from the standpoint of that one of the confederated Powers which seeks assistance; and there exists no treaty by which their High Mightinesses have renounced the independence of the State and sacrificed their interests to those of Great Britain to the point of depriving themselves of the right of so necessary and indispensable an examination by adopting a course by which they might be considered as bound to submit to the pleasure of the Court of England and to grant the assistance asked, even when that Court may see fit, in a quarrel with another Power, to prefer a resort to arms to a reasonable settlement of grievances that are well founded.

It is therefore in no party spirit nor as the result of the machinations of a dominant cabal, but after mature deliberation and in the sincere desire of upholding the vital interests of the Republic that the States of the respective Provinces were unanimous in expressing the opinion that the aid requested should be refused in the most polite manner. And Their High Mightinesses would not have failed, pursuant to these resolutions, to transmit to His Britannic Majesty a reply to the repeated requests for aid, but for the unheard-of and violent attack upon the flag of the State under the command of Rear Admiral

van Bylandt, the refusal to give satisfaction on so grave a point, and the declaration, as strange as it was unjust, that His Majesty saw fit to make regarding the suspension of treaties between him and the Republic, all of which events, calling for deliberations of a very different character, brought to a close the deliberations which had taken place on the subject of the said request.

In vain and without any semblance of truth did the British Government try to increase its list of grievances, alleging that the abolition of export duties tended to facilitate the transportation of naval munitions to France, for, although the abolition of these duties pertained to the regulation of domestic commerce, a right which all sovereigns incontestably possess and for which they are not accountable to any one, this point was taken under consideration, it has never been settled, so that these duties are still levied on the old basis, and there is no foundation whatever for the statements on the subject contained in the manifesto, although it cannot be denied that His Britannic Majesty's conduct toward the Republic would be justification enough for such a measure on the part of Their High Mightinesses.

There is just as little ground for His Britannic Majesty's displeasure at what occurred with regard to Paul Jones, the American. Many years ago Their High Mightinesses had issued and caused to be published far and wide orders regarding the admission of corsairs and privateers of foreign nations with their prizes to ports under their dominion, which orders have up to the present time been observed and executed without any exception. In the case in point Their High Mightinesses could not deviate from these orders with respect to a privateer holding the commission of the American Congress, which happened to be in the roadstead of Texel in company with the war frigates of a sovereign Power, without sitting in judgment and passing upon matters in which Their High Mightinesses were not obliged to take part and in which it did not appear to them to be compatible with the interests of the Republic to interfere in any way. Their High Mightinesses therefore considered it advisable not to deviate from the orders of such long standing, but they resolved to issue the most explicit prohibition to prevent the said privateer from securing munitions of war and ordered it to leave the roadstead as soon as possible and not to remain longer than was absolutely necessary to repair the damages suffered from the sea, with the formal warning that, in case of a longer stay, they would be obliged to compel his de-

parture, to which end the State's officer in charge of the said roadstead made ready to take the necessary action, the effect of which was that this privateer had barely time to escape.

With regard to occurrences in other parts of the world, the information which Their High Mightinesses have received from time to time from the East Indies is the exact opposite of that which appears to come to His British Majesty. The repeated complaints which the directors of the East India Company have addressed to Their High Mightinesses and which the latter, through their love of peace, have allowed to go no further, are an incontestable proof thereof, and the measures in regard to the West Indies, set forth in detail above, stand as an unanswerable proof of the sincerity, the zeal, and the care with which Their High Mightinesses have taken it upon themselves to maintain the strictest and most scrupulous neutrality in these countries; and Their High Mightinesses have never been able to discover any legal proof of an infraction of their orders in this respect.

As regards a possible treaty of commerce with North America, proposed by a member of the Government from the province of Holland without any public authority, and the memorials presented on this subject by Sir Joseph Yorke, the facts are as follows: When that Ambassador had presented the memorial of November 10 of last year, Their High Mightinesses, passing over the expression ill becoming communications between sovereigns, of which this memorial was full, lost no time in giving the matter serious consideration, and by their resolution of the 27th of the same month they did not hesitate to disavow and disapprove publicly all that had been done in this respect; whereupon they had every reason to expect that His Britannic Majesty would acquiesce in this declaration, since he could not be unaware of the fact that Their High Mightinesses have no jurisdiction over the respective Provinces, and that this question had to be referred to the States of the Province of Holland, vested like the States of the other Provinces with exclusive authority over their subjects. Their High Mightinesses, however, had no reason to doubt that the States of the said Province would take action in accordance with the exigencies of the case and in conformity with the laws of the State and the rules of equity. Therefore the assiduity with which Sir Joseph Yorke insisted, in a second memorial, on the matter of punishment could not but seem strange to Their High Mightinesses, and their surprise became still greater when three days later that Ambassador declared

by word of mouth to the President of Their High Mightinesses that, if he did not receive on that very day an entirely satisfactory reply to his memorial, he would be obliged to inform his Court by special courier; that Their High Mightinesses have been advised of this declaration, have perceived its importance as plainly manifesting the course already decided upon by his King's Council; and although established custom does not permit consideration of verbal statements made by foreign ministers, they saw fit to make an exception in this instance and to direct their clerk to call on Sir Joseph Yorke and inform him that his memorial had been received *ad referendum* by the deputies of the respective Provinces, in conformity with accepted usages and the constitution of the Government, adding (a fact which appears to have been omitted intentionally in the manifesto) that they would endeavor to have a reply to his memorial sent at the earliest possible moment and as soon as the constitution would permit. A few days later the deputies of Holland notified the assembly of Their High Mightinesses that the States of their Provinces had resolved unanimously to ask the opinion of their court of justice with regard to the demand for punishment, charging the said court to give its opinion as soon as possible, setting aside all other matters. Their High Mightinesses did not fail to advise Sir Joseph Yorke at once of this resolution; but what was their surprise and astonishment when they learned that this Ambassador, after having perused these instructions, had sent a note to the clerk, taxing this resolution with being evasive and refusing to transmit it to his Court, thus compelling Their High Mightinesses to send the said resolution to Count van Welden, their Minister at London, with instructions to transmit it as soon as possible to the Ministry of His Britannic Majesty; but the refusal of that Ministry prevented the carrying out of these instructions.

From this statement of all the circumstances in this matter, the impartial public will be in a position to pass judgment on the principal reason or rather pretext advanced by His Britannic Majesty for unbridling his designs against the Republic. The matter may be summed up as follows: His Majesty was informed of negotiations, which are said to have taken place in 1778 between a member of the Government of one of the Provinces and a representative of the American Congress, the object of which negotiations was the drafting of a treaty of commerce to be concluded between the Republic and the said Colonies *casu quo*, to wit, in case the independence of these Colonies should be

recognized by the Crown of England. These negotiations, although conditional and contingent upon a condition depending upon a future act of His Majesty himself, these negotiations, which without this future act or declaration, would have no effect whatever, were taken in such bad part by His Majesty and seemed to arouse his displeasure to such a degree that he saw fit to demand of the State public disavowal and disapproval, as well as punishment and complete satisfaction. Their High Mightinesses immediately and without the slightest delay granted the first part of the request, but the punishment demanded was not within their jurisdiction, and they could not comply with the request in this respect without contravening the fundamental constitution of the State. The States of the Province of Holland alone had legal jurisdiction in the matter, and they alone could take action through the ordinary and regular channels. This sovereign, ever holding fast to those maxims which compel respect for the authority of the law, and fully convinced that the maintenance of the department of justice in the integrity and impartiality which are inseparable therefrom, must form one of the strongest supports of supreme power; this sovereign, bound by all that is most sacred to defend and to protect the rights and privileges of its subjects, could not so far forget itself as to subscribe to the will of His Britannic Majesty by attacking these rights and privileges and by forcing the bars set by the fundamental laws of the Government. These laws required the intervention of the judicial department, and the aforesaid States resolved to follow the prescribed course by asking the opinion of the court of justice established in their Province. It has been by following this course that they have developed in the sight of His Britannic Majesty, of the English nation, and of all Europe, the unalterable principles of justice and equity which characterize the Batavian constitution and which in so important a branch of the public administration as that regarding the exercise of judicial power must always be a shield and a bulwark against everything that may jeopardize the security and independence of a free nation. It was also by this means and by following this course that, far from closing the way to justice or evading the demand for punishment, the road was, on the contrary, left open for the regular procedure, in conformity with the constitutional principles of the Republic. And, finally, it was by depriving the Court of London of any pretext for complaining of a denial of justice that they prevented the least shadow or semblance of a reason



which might have justified that Court in making reprisals, to which, nevertheless, it did not scruple to resort in a manner as odious as it was unjust.

But while the State was taking measures so just and so calculated to obviate all cause for complaint, the step which marked the beginning of the rupture had already been decided upon and concluded in the King's Council. That Council had resolved to try every means of thwarting and preventing, if possible, the accession of the Republic to the convention between the Powers of the north, and the event has clearly proved that it was out of enmity toward that convention that the said Court has allowed itself to take the action which it has seen fit to take against the Republic.

For these reasons and since as a result of the repeated outrages and immense losses which the subjects of the Republic have suffered at the hands of His Majesty the King of Great Britain, Their High Mightinesses find themselves further provoked and assailed by His said Majesty and forced to employ the means which they have at hand to defend and avenge the precious rights of their liberty and of their independence. They feel absolutely confident that the God of armies, the God of their fathers, who by the visible guidance of his Providence sustained and delivered their Republic in the midst of the greatest dangers, has blest the means which they have determined to put into operation for their legitimate defense, crowning the righteousness of their arms with the every triumphant aid of His Almighty protection, while Their High Mightinesses eagerly await the moment when they shall see the return of their neighbor and ally, but now their enemy, to moderate and equitable sentiments. When that time comes, Their High Mightinesses shall take advantage of every opportunity compatible with the honor and independence of a free State, which may tend to reconcile them with their former friend and ally.

Done and concluded at the assembly of Their High Mightinesses the Lords States-General of the United Provinces at The Hague, March 12, 1781.

COCQ VAN HAEFTEN

By their order

H. FAGEL

**British Additional Instruction to War-ships and Privateers,  
April 20, 1781<sup>1</sup>**

An additional instruction to all ships of war and privateers, that have, or may have letters of marque against the French King, the King of Spain, or the States-General of the United Provinces, their vassals or subjects, or others inhabiting within any of their countries, territories, or dominions, or against any other enemies or rebellious subjects of the Crown of Great Britain. Given at our Court at St. James's, the twentieth day of April, 1781, in the twenty-first year of our reign. [L. S.]

Whereas we have ever been desirous to prevent interruption being given to the trade and commerce of every State in amity with us, as far as was compatible with the necessary operations of war: and whereas it will tend very much to that purpose that the trade and navigation of the Baltic should remain uninterrupted; we have therefore been pleased to resolve that so long as the trade of our subjects shall continue to be secured in those seas, our ships of war, privateers, and other vessels acting under our commission, shall be restrained from making prize of, stopping or detaining any ships or vessels within the Baltic. And we do hereby strictly charge and enjoin the commanders of our ships of war, and the commanders of all ships and vessels having letters of marque and reprisal, that they do not by virtue of their commissions, or under colour thereof, stop or detain any ship or vessels in the Baltic for the purpose of making prize of the same, but that they suffer all such ships and vessels as they shall meet in those seas to proceed in their respective voyages without any interruption.

By His Majesty's command,

STORMONT

**Prussian Declaration and Ordinance concerning Navigation and  
Maritime Commerce, April 30, 1781<sup>2</sup>**

His Majesty the King of Prussia, etc, in view of the almost general maritime war now taking place in the southern parts of Europe, has

<sup>1</sup>Hennings, vol. 2, p. 104.

<sup>2</sup>Translation. German text, Martens, *Recueil*, 2d ed., vol. 3, p. 284.

taken especial care and measures to procure to his subjects engaged in navigation and maritime commerce all possible security, and to that end has not only requested all the belligerent Powers to issue to the commanders of their war-ships and to ship-owners strict orders to have the Prussian flag adequately respected, but to allow Prussian ships bearing merchandise which, according to usage and international law, is free and not to be regarded as contraband, to pass everywhere unmolested and unhindered; to prevent their being either damaged or stopped, or, even less, taken to foreign ports without necessity and authority; concerning which matters they receive friendly and encouraging assurances from the respective Courts; the said Courts, in order better to observe that object, have instructed their Ambassadors residing at the Courts of the belligerent Powers, opportunely and energetically, by intercession and representation, to receive their sea-faring subjects whose ships might possibly be captured and confiscated, as frequently happens, or robbed at sea, so that such ships may soon be released and compensated, and that legal action arising therefrom may be decided and settled as soon as possible, and with due impartiality. Now, in order that the Royal Ambassadors may properly attend to these matters, the Royal Prussian subjects who find themselves in such situations as described, must therefore address themselves in person, or by duly authorized agent, to the Royal Ambassador accredited to the Court where the claim is to be presented, and acquaint him with the difficulty and all the facts concerning it, that in the proper place and by his intercession he may assist them. They must not, however, rely solely upon such ministerial intervention, but must present their complaints to the admiralty and maritime courts of the country to which their ship is taken, or where they sustained injury, and with the required proofs, legally prosecute their complaints through the various courts established in the country, through authorized agents or advocates, in which case, it is to be hoped, they shall receive good legal assistance, and in the absence of such assistance they can address themselves to the Royal Ambassadors, in order, if necessary, to present proper complaint at every Court, according to the circumstances, and to bring about their redress.

However, in order still further to secure the navigation of the Prussian subjects. His Majesty the King of Prussia has had the request presented through his Ambassadors, to Her Majesty the Em-

press of all the Russias and both the other two northern maritime Powers, which three Courts, as is well known, have allied themselves in defense of maritime neutrality: that they, as Powers with which His Majesty is living in truest friendship, instruct the commanders of their war-ships, to take under their protection and convoy, such Prussian merchant ships which they may meet on the sea, as long as they remain within their sight and cannon range, in case such ships should be captured or molested by the war-ships and ship-owners of the belligerent Powers. Through a written declaration for her Ministry, Her Imperial Majesty of all the Russias, has given assurances to His Majesty, as her confederate ally; that the commanders of her war-ships had not only been ordered to protect against molestation and attack the ships of Prussian merchants and mariners as belonging to a Power allied with her, and to observe most strictly the rules of neutrality as established in international law, in case they should encounter such ships, but that her Ambassadors accredited to the Courts of the belligerent Powers would be instructed that, as often as the Royal Prussian Ambassadors had cause to present claims and complaints to these Courts because of obstructions to commercial navigation of Prussian subjects, the Ambassadors should support them through their intervention, in the name of Her Russian Imperial Majesty; that in return, Her Majesty expected His Majesty the King of Prussia to impart similar instructions to his Ambassadors at the Courts of the belligerent Powers, conformably to the maritime convention of the northern maritime Powers, and to support in all cases by emphatic intervention the representations of the Ambassadors of the northern Powers allied in behalf of maritime neutrality, in case they had cause to demand satisfaction for the subjects of their sovereigns.

His Majesty the King of Prussia has received with obliging gratitude this friendly declaration of Her Imperial Majesty and made a corresponding declaration, instructing his Ambassadors at foreign Courts accordingly. On the occasion of other maritime negotiations, His Majesty had already requested the Royal Court of Denmark to extend to Prussian merchant ships the protection of the Danish maritime Power, and in answer thereto, had received the friendly assurance that the Royal Danish war-ships would take all Prussian merchant ships under their protection, provided that these ships would conform to maritime treaties entered into between the Danish Crown

and other Powers. His Majesty the King of Prussia has made a similar request of the Royal Swedish Court, and from the friendship of His Majesty the King of Sweden, expects to receive such assurances as have been received from the Empress of Russia and from the King of Denmark.

Therefore, all these circumstances are herewith announced to all royal subjects who engage in sea-faring and in maritime commerce, so that they and the ship captains may act conformably thereto; and in cases of necessity, should they be attacked, molested or captured on the sea by the war-ships and ship-owners of the belligerent nations, they may address themselves to such Russian Imperial, Royal Danish or Royal Swedish war-ships, as may be cruising near-by, ask for their protection and assistance, and as far as possible keep in touch with the fleets and convoys of these three northern maritime Powers.

In view of the fact, however, that it is merely the intention of His Majesty the King, by the above-mentioned measures to safeguard the lawful and innocent maritime commerce of his subjects, and in no way to injure the high Powers which are waging war among themselves and with which His Majesty is living in friendship, nor to favor any trade which might be injurious to them or unlawful, therefore, all royal subjects engaging in maritime commerce and navigation, shall so organize their commerce and navigation that they will observe a strict neutrality, in accordance with natural law or the generally accepted rights of nations. But, as there is a difference between the different treaties which one and other Courts have entered into, therefore the royal Prussian subjects shall preferably conform themselves to the well-known declaration made by Her Imperial Majesty of all the Russias during the preceding year to the belligerent Powers, and to the ordinance issued by Her Majesty, May 8, 1760, to her Board of Trade, which His Majesty regards as most conformable to the law of nations and to their own rights, and carry on their maritime trade in accordance therewith. In consequence, His Majesty the King of Prussia hereby commands all his subjects who engage in navigation and maritime trade:

#### ARTICLE I

That they shall not take part in the present war under any pretext nor, under the Prussian flag, supply the belligerent Powers with any merchandise which is generally regarded as contraband and forbidden,

or with real war necessities such as cannon, mortars, bombs, grenades, guns, pistols, bullets, flint-stones, fuses, powder, saltpeter, sulphur, pikes, swords and saddles. Of such they shall not carry more on their merchant ships than required for their own use.

## ARTICLE 2

Prussian navigators may, in Prussian ships, carry to the belligerent and neutral nations all other goods which, apart from those indicated in the preceding article, are not forbidden nor real war necessities, especially the products of any royal province; and His Majesty expects from the sense of justice and of friendship of the belligerent Powers that they will not permit their armed ships to molest or to seize Prussian ships carrying masts, timber, hemp, tar, corn and other like articles, not real war necessities, but which may subsequently be used to such ends, and which constitute the foremost and almost the only articles of Prussian trade; otherwise, Prussian maritime commerce would be destroyed; and His Majesty can not be expected to consent that the said commerce be stopped or allowed to stagnate because of the war between the belligerents. On the ground of these same principles it is hoped that the belligerent Powers will let pass free and unhindered, that they will not appropriate and seize, nor confiscate the unprohibited merchandise and cargoes of Prussian subjects which might be found aboard the ships of the belligerent nations, nor the unprohibited merchandise of the belligerent nations which is on board Prussian ships. and in all such cases His Majesty will as far as possible protect his subjects, will personally see to it and cautiously act to the end that their merchandise and cargoes be shipped on Prussian ships under the Prussian flag, and not to engage to a large extent in the transportation of merchandise and goods belonging to the belligerent nations, and to guard against all possible misunderstandings and mishaps, especially to carry on a purely legitimate Prussian maritime trade.

## ARTICLE 3

All Prussian ships sailing on the sea must provide themselves with regular passes and attestations from the boards of the admiralty, of the war and of the authorities of each province, or from the magistrates of each locality, in the customary way, as well as with the usual charter document, bill of lading and other certificates which must

state the quality and quantity of the cargo, the name of the owner and consignee together with that of its destination. These maritime documents must be clear and unequivocal, must be at all times on board of each ship, and under no circumstances ever be thrown overboard; and especially, every skipper must guard against false maritime papers.

#### ARTICLE 4

If loaded in a foreign port, every Prussian ship must there provide itself with the required and customary local maritime papers, in order to prove its identity everywhere, to what nation it belongs, the cargo it carries, whence it comes and whither it is bound.

#### ARTICLE 5

There shall be no naval officers or employees on board Prussian ships, nor shall more than one-third of the sailors belong to the belligerent nations

#### ARTICLE 6

All Prussian navigators are hereby forbidden to carry cargoes and merchandise of whatever nature, to such localities and parts as are really besieged, or closely blockaded and closed by one of the belligerent Powers.

#### ARTICLE 13

Prussian subjects, mariners and merchants shall not lend their names to foreign nations, but shall carry on their commerce as is permissible in accordance with the rights and customs of the peoples, in such manner as not to cause injury to any one of the belligerent nations, nor to give cause to any one of the belligerent nations to enter a rightful complaint.

Those royal subjects who conform themselves strictly to this ordinance may expect all possible protection and assistance from His Royal Majesty; those, however, who act against this ordinance may not expect such protection and assistance, but must remain personally responsible for all danger and loss they might incur in so acting.

Given at Berlin, April 30, 1781.

By special command of His Majesty the King.

E. F. v. HERZBERG  
FINKENSTEIN

**Convention between Russia and Prussia for the Maintenance of the Freedom of Neutral Commerce and Navigation, by which Prussia accedes to the System of Armed Neutrality, May 19, 1781<sup>1</sup>**

The justice and equity of principles which Her Majesty the Empress of all the Russias adopted and acknowledged before Europe by her declaration of February 28, 1780,<sup>2</sup> transmitted to all the belligerent Powers, have determined His Majesty the King of Prussia to take part as directly as possible in the glorious system of neutrality which has resulted therefrom, with the universal commendation of all the nations, not only by acknowledging these principles which are founded on justice and the law of nations, but also by acceding thereto and by guaranteeing them by a formal act. This determination of His Prussian Majesty meeting entirely with the desire of Her Imperial Majesty of all the Russias to give them a stable and solid basis by having them solemnly recognized by all the Powers as the only principles capable of establishing security of commerce and of navigation for neutral nations in general, Their Majesties have seen fit with one accord to enter into negotiations regarding a subject in which they are both equally interested, in so far as it can work to the welfare and advantage of their respective subjects, and to this end they have chosen, appointed, and authorized, to wit: His Majesty the King of Prussia, the Count von Goertz, his Minister of State, and his Minister Extraordinary at the Imperial Court of Russia; and Her Imperial Majesty of all the Russias, Nikita Count Panin, her Privy Councilor, Senator, Chamberlain, and Chevalier of the Orders of St. Andrew, of St. Alexander-Newsky, and of St. Anne; John Count d'Ostermann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander-Newsky and of St. Anne; Alexander de Besborodka, Major General of her Armies and Colonel commanding the Kiovia Regiment of Militia of Little Russia; and Pierre de Bacounin, her Councilor of State, Member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne; who having exchanged their full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE 1

Their Majesties, being sincerely resolved to maintain relations of friendship and of the most perfect harmony with the Powers now at

<sup>1</sup>Translation. For the French text, see Appendix, p. 659.

<sup>2</sup>*Ante*, p. 273.



war and to continue to observe the strictest and the most scrupulous neutrality, declare their desire to see to the most rigorous execution of the prohibition of commerce in contraband by their subjects, with any of the Powers now at war or which may hereafter enter into the war.

#### ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what is to be considered contraband, Her Majesty the Empress of all the Russias has declared that she recognizes as such only the goods included under this head in Articles 10 and 11 of her treaty of commerce with Great Britain,<sup>1</sup> whose obligations, which are founded entirely on the natural law, she has extended to the Crowns of France and Spain, which countries have not heretofore bound themselves with her Empire by any engagement relating purely to commerce. Since there likewise exists no engagement of this nature between His Prussian Majesty and the Powers now at war, he declares for his part, that, in this respect, he also desires to bind himself with them by the obligations of the aforesaid treaty of commerce between Russia and Great Britain, with specific reference to Articles 10 and 11 of that treaty.

#### ARTICLE 3

Contraband determined and excluded from commerce, in conformity with Articles 10 and 11 of the aforesaid treaty concluded between Russia and Great Britain on June 20, 1766, His Majesty the King of Prussia and Her Imperial Majesty of all the Russias understand and desire that all other trade be and remain absolutely free on the basis of the general principles of the natural law, which Her Majesty the Empress has solemnly demanded, and of which freedom of commerce and of navigation, as well as the rights of neutral peoples, is a direct consequence; and in order that they may not depend upon an arbitrary interpretation, suggested by isolated and temporary interests, Her Imperial Majesty of all the Russias has adopted and established as a basis the four following points:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

<sup>1</sup>Treaty of June 20, 1766, *ante*, p. 342.

(2) That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

(3) That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

(4) That neutral vessels may be detained only for just cause and when the facts are perfectly evident; that they shall be adjudged without delay; that the procedure shall always be uniform, prompt, and legal; and that, in addition to the compensation granted to vessels which have suffered loss without having been at fault, complete satisfaction shall in each case be rendered for the insult to the flag.

His Majesty the King of Prussia accedes to these principles, adopts them also, and guarantees them in the most positive manner, binding himself to uphold them and demand their observance whenever the interests of the commerce and navigation of the subjects of the two high contracting Parties may so require.

#### ARTICLE 4

In return for this accession Her Majesty the Empress of all the Russias will continue to protect the commerce and navigation of the Prussians with her fleets, as she has already agreed to do at the request of His Majesty the King of Prussia, having had orders sent to all the commanding officers of her squadrons to protect and defend against all insults and molestation the merchant ships of Russia, which happen to be in their course, as being the vessels of a friendly and allied Power that strictly observes neutrality, it being understood, however, that the aforesaid vessels shall not be used for any illicit commerce, or for any purpose that is contrary to the rules of the strictest and most scrupulous neutrality.

#### ARTICLE 5

If it should happen, in spite of the greatest care on the part of the two contracting Powers for the observance by them of the most complete neutrality, that the merchant vessels of His Majesty the King of Prussia and of Her Imperial Majesty of all the Russias should be insulted, pillaged, or taken by the war-ships or private ship-owners

of any of the Powers at war, then the Minister of the injured party at the Court, whose war-ships or private ship-owners shall have committed such acts, shall make representations, shall make claim for the captured merchant vessel, and shall insist upon suitable indemnities, never losing sight of reparation for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaint in the most energetic and efficacious manner, and they will thus act with one accord. If justice should be refused, or if it should be postponed from time to time, then Their Majesties shall employ reprisals against the Power so refusing and they shall continually consult with each other as to the most appropriate method for carrying out such reprisals.

#### ARTICLE 6

If it should happen that either of the two contracting Powers or both of them, because of or in contempt of the present act, or for any other cause relating thereto, should be disturbed, molested, or attacked, it has been likewise agreed that the two Powers shall make common cause for their mutual defense, and shall work and act in concert in order to secure entire and full satisfaction, both for the insult to their flag and for the losses caused to their subjects.

#### ARTICLE 7

The present act shall have no retroactive effect, and therefore no action shall be taken with respect to differences that have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral countries of Europe in general.

#### ARTICLE 8

All the stipulations set forth in the present act must be regarded as permanent and as constituting the law in the matter of commerce and of navigation, and whenever there is occasion to determine the rights of neutral nations.

#### ARTICLE 9

The principal aim and object of this act being to ensure general freedom of commerce and of navigation, His Prussian Majesty and

Her Imperial Majesty of all the Russias agree and engage in advance to allow other neutral Powers to accede hereto, which by adopting the principles herein contained shall share its obligations as well as its advantages.

#### ARTICLE 10

In order that the Powers at war may not allege their ignorance of the engagements undertaken by Their said Majesties, they shall communicate in a friendly way to the said Powers these engagements, which are in nowise hostile to them nor to the detriment of any one of them, but aim solely to ensure security of commerce and of navigation to their respective subjects.

#### ARTICLE 11

The present act shall be ratified by the two contracting Parties, and the ratifications thereof shall be exchanged within six weeks from the day of the signing thereof, or sooner if possible.

In faith whereof we, the plenipotentiaries, by virtue of our full powers have signed and have hereto affixed the seals of our arms.

Done at St. Petersburg, May 8. 1781.<sup>1</sup>

[L.S.] E. COUNT VON GOERTZ

[L.S.] C. N. PANIN

[L.S.] C. JOHN D'OSTERMANN

[L.S.] ALEXANDER DE BESBORODKA

[L.S.] PIERRE DE BACOUNIN

#### SEPARATE ARTICLES

##### ARTICLE 1

As His Majesty the King of Prussia and Her Majesty the Empress of all the Russias are equally interested in preserving the security and tranquillity of the Baltic Sea, and in protecting it from the disturbances of war and privateering, a system the more just and natural because the Powers whose States border thereon enjoy the most profound peace. They have mutually agreed to maintain that it is a closed sea, incontestably such by its geographical situation, in which all nations must and may navigate in peace and enjoy all the advan-

<sup>1</sup>May 19, 1781, new style.

tages of perfect tranquillity, and to this end to adopt among themselves measures capable of guaranteeing this sea and its coasts against all hostilities, piracies, and acts of violence.

#### ARTICLE 2

Since stress of weather or some other circumstance may force Russian vessels to take refuge in a Prussian port, either to pass the winter, to make repairs, or to escape the storm, His Majesty the King of Prussia engages to see to it that they are received and treated as vessels of a friendly and closely allied Power, and that they are furnished, at a just and reasonable price, with the necessary materials for repairs and with the provisions needed by the crew for its sustenance; in a word, to see that all necessary arrangements are made in order that these vessels and their crews may be treated and cared for in the most friendly manner.

#### ARTICLE 3

At the more or less remote time when peace shall be restored between the belligerent Powers, His Majesty the King of Prussia and Her Majesty the Empress of all the Russias shall use their best efforts with the maritime Powers in general to bring about the universal acceptance and recognition in all naval wars, which may arise hereafter, of the system of neutrality and the principles established in the present act, forming the basis of a universal maritime code.

#### ARTICLE 4

As soon as this act shall have been ratified and the exchange of ratifications shall have taken place, the high contracting Powers shall take care to communicate it, with the exception of the separate articles, in good faith, conjointly and with one accord, through their Ministers accredited to foreign Courts, and specifically those Courts which are now at war.

These separate articles shall be considered and regarded as forming a part of the act itself and shall have the same force and effect as though they had been inserted word for word in the said act, concluded the same day between the two high contracting Parties. They shall be ratified in the same way and ratifications thereof shall be exchanged at the same time.

In faith whereof we, the plenipotentiaries, by virtue of our full powers, have signed them and have affixed thereto the seals of our arms.

Done at St. Petersburg, May 8, 1781.<sup>1</sup>

[L.S.] COUNT VON GOERTZ

[L.S.] C. N. PANIN

[L.S.] C. JOHN D'OSTERMANN

[L.S.] ALEXANDER DE BESBORODKA

[L.S.] PIERRE DE BACOUNIN

### Act of Accession of the Emperor of the Romans to the System of Armed Neutrality, October 9, 1781<sup>2</sup>

Joseph II, by the grace of God Emperor of the Romans, ever August, King of Germany and of Jerusalem, of Hungary and Bohemia, of Dalmatia, Croatia, Slavonia and Galicia, and of Lodomeria, Archduke of Austria, Duke of Burgundy and of Lorraine, Grand Duke of Tuscany, Grand Prince of Transylvania, Duke of Milan, of Mantua, of Parma, and Count of Hapsburg, of Flanders, of Tyrol, etc., etc., etc.:

Having been amicably invited by Her Majesty the Empress of all the Russias to join with her in the consolidation of the principles of

<sup>1</sup>May 19, 1781, new style.

<sup>2</sup>Translation. For the French text, see Appendix, p. 665. G. F. Martens prints at p. 252 of vol. 3 of his *Recueil* (2d ed.) a treaty in the Italian language between the Emperor of the Romans and the Empress of Russia dated at Vienna, July 10, 1781, giving as his source *l'ita e fasti di Giuseppe II*, vol. 2, p. 33, and remarking in a footnote: "This work is the only one where I find a copy of this treaty, of which no mention is made either in the act of accession and acceptance [*post*, 406] or in any other work that has come into my hands. The *Secret History of the Armed Neutrality* makes no mention of it. . . . The author of the *Vita e fasti*, who is not very exact in the copies of treaties that he has inserted, has omitted the signatures. I should have liked to compare them with what the author of the *Secret History* relates at p. 46 on the subject of the signatures and exchange of ratifications of the acts of accession and acceptance between the two Imperial Courts." An English translation of this document may be found at p. 119 of Pamphlet No. 27 of the Division of International Law of the Carnegie Endowment for International Peace.

Fedor Martens, the Russian publicist and editor of the *Recueil de Traités et Conventions conclus par la Russie avec les Puissances étrangères* says in a footnote on p. 122 of vol. 2 of that compilation, that this convention of July 10, 1781, must be considered as apocryphal as no copies thereof are to be found either in the Russian archives or the archives of Austria and as, moreover, the reports of the envoys bear no trace of any diplomatic negotiations whatever bearing on it.

neutrality on the sea, looking to the maintenance of the freedom of maritime commerce and of the navigation of neutral Powers, which she has set forth in her declaration of February 28, 1780,<sup>1</sup> transmitted in her name to the belligerent Powers, which principles are in substance :

That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

That the effects belonging to subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

That nothing shall be considered contraband except the merchandise enumerated in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1766.<sup>2</sup>

That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

Finally, that these principles shall serve as the rule in proceedings and judgments as to the legality of prizes.

And Her said Imperial Majesty of all the Russias having proposed to us to this end that we manifest by a formal act of accession, not only our complete adhesion to these same principles, but also our immediate cooperation in measures to ensure their execution, which we, on our part, shall adopt by contracting mutually with Her said Majesty the following engagements and stipulations, to wit :

(1) That the strictest neutrality shall be observed by both, that the prohibitions against commerce in contraband on the part of their respective subjects with any one of the Powers now at war, or who may hereafter enter the war, shall be most rigorously enforced.

(2) That if, in spite of all the care exercised to this end, the merchant ships of either of the two Powers should be taken or insulted by any of the vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other, and if justice should be refused upon these complaints, they shall continue to take counsel with each other as to the method most likely to secure it through just reprisals.

(3) That if it should happen that either of the two Powers or both of them, as a result of or in contempt of the present agreement, should

<sup>1</sup>*Ante*, p. 273.

<sup>2</sup>*Ante*, p. 342.

be disturbed, molested, or attacked, they would then make common cause for their mutual defense and would work in concert to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

(4) That these stipulations shall be considered by both as permanent and as being the rule whenever there may be occasion to pass upon the rights of neutrality.

(5) That the two Powers shall communicate in a friendly way their present mutual agreement to all the Powers that are now at war.

Since it is our wish, because of the sincere friendship which happily unites us with Her Majesty the Empress of all the Russias, as well as for the welfare of Europe in general and of our countries and subjects in particular, to contribute our share to the execution of views, principles, and measures, which are as salutary as they are in accord with the clearest conceptions of the law of nations, have resolved to accede thereto, and we accede formally by virtue of the present act, promising and binding ourselves, just as Her Majesty the Empress of all the Russias binds herself with respect to us, to observe, to execute and to guarantee all the points and stipulations aforesaid.

In faith whereof we have signed the present act with our own hand and have affixed thereto our seal.

Given at Vienna, October 9, 1781.

[L.S.] JOSEPH

KAUNITZ-RIETBERG

ANT. SPIELMANN

**Act signed by the Emperor of the Romans concerning the Adoption of the Principles of the Armed Neutrality as Universal Rules for the Conduct of Naval War, October 9, 1781<sup>1</sup>**

Joseph II, by the grace of God Emperor of the Romans, ever August, King of Germany and of Jerusalem, of Hungary, of Bohemia, of Dalmatia, of Croatia, of Esclavonia, of Galicia, and of Lodomeria, Archduke of Austria, Duke of Burgundy and of Lorraine, Grand Duke

<sup>1</sup>Translation. French text, F. Martens, *Traité et Conventions conclus par la Russie*, vol. 2, p. 125.



of Tuscany, Grand Prince of Transylvania, Duke of Milan, of Mantua, of Parma, etc., Count of Hapsburg, of Flanders, of Tyrol, etc., etc.

As the desire to see the restoration of tranquillity in Europe, which animates us together with Her Majesty the Empress of all the Russias, has led us to unite our efforts with those of Her said Imperial Majesty to hasten so salutary an event, and as we have to this end, in concert with her, offered our mediation, which has been equally accepted by the belligerent Powers: we have, moreover, mutually agreed to work in concert, when peace shall have been restored, to secure the permanent establishment of the principles on the rights of neutrality, which are the subject of the public act of accession which we have this day signed.

Therefore we propose, and we bind ourselves by the present act with Her Majesty the Empress of all the Russias, who for her part promises and binds herself with us, to take up conjointly and in the most effectual manner with the naval Powers in general the question of having the said principles accepted and recognized as the basis of a universal jurisprudence on the rights of neutral nations in all naval wars which may hereafter occur.

In faith whereof we have signed the present act with our own hand and have hereto affixed our seal.

Given at Vienna, October 9, 1781.

[L. S.] JOSEPH

W. KAUNITZ-RIETBERG  
ANT. SPIELMANN

**Act of the Empress of Russia accepting the Accession of the Emperor of the Romans to the System of Armed Neutrality, October 30, 1781<sup>1</sup>**

We, Catherine II, by the grace of God Empress and Autocrat of all the Russians, of Moscow, Kiovia, Vladimir, Novgorod, Czarina of Casan, Astrakhan, and Siberia, Lady of Plescau, and Grand Duchess

<sup>1</sup>Translation. French text, F. Martens, *Traité et Conventions conclus par la Russie*, vol. 2, p. 126. The act of accession was exchanged for the act of acceptance on October 19th by the respective plenipotentiaries.

of Smolensk, Duchess of Esthonia, of Livonia, Carelia, Twer, Ingria, Parmia, Wiatka, Bulgaria, and others, Lady and Grand Duchess of Lower Novgorod, of Czernigovia, Kasan, Rostof, Iaroslav, Belo, Oseria, Udoria, Obdoria, Condemia Ruler of all the region of the North, Lady of Iveria, and Hereditary Princess and Sovereign of the Czars of Cartalinia and Georgia, as well as of Cabardinia, of the Princes of Czircassia, of Gorsky, and others: Having amicably invited His Majesty the Emperor of the Romans, King of Hungary and of Bohemia, to cooperate with us in consolidating the principles of neutrality on the seas, tending to the maintenance of freedom of the maritime commerce and the navigation of neutral Powers, as set forth by us in our declaration of February 28, 1780,<sup>1</sup> delivered in our behalf to the belligerent Powers, which principles state in substance:

That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

That the effects belonging to subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

That nothing shall be considered contraband except the merchandise enumerated in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1766.<sup>2</sup>

That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed its vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

Finally, that these principles shall serve as the rule in proceedings and judgments as to the legality of prizes.

And His said Imperial and Royal Apostolic Majesty having consented, for this purpose, to manifest by a formal act of accession, not only his complete adhesion to the said principles, but also his immediate cooperation in the measures to ensure their execution, which we shall adopt on our part, mutually contracting with His said Imperial and Royal Apostolic Majesty the following engagements and stipulations, to wit:

(1) That the strictest neutrality shall be observed by both, that the prohibitions against commerce in contraband on the part of their

<sup>1</sup>*Ante*, p. 273.

<sup>2</sup>*Ante*, p. 342.

respective subjects with any one of the Powers now at war, or who may hereafter enter the war, shall be most rigorously enforced.

(2) That if, in spite of all the care exercised to this end, the merchant ships of either of the two Powers should be taken or insulted by any of the vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other, and if justice should be refused upon these complaints, they shall continue to take counsel with each other as to the method most likely to secure it through just reprisals.

(3) That if it should happen that either of the two Powers or both of them, as a result of or in contempt of the present agreement, should be disturbed, molested, or attacked, they would then make common cause for their mutual defense and would work in concert to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

(4) That these stipulations shall be considered by both as permanent and as being the rule whenever there may be occasion to pass upon the rights of neutrality.

(5) That the two Powers shall communicate in a friendly way their present mutual agreement to all the Powers now at war.

As a result of the sincere friendship that happily unites us with His Majesty the Emperor, as well as for the welfare of Europe in general, and of our countries and subjects in particular, we formally accept by virtue of the present act the accession of His Majesty the Emperor of the Romans, King of Hungary and of Bohemia, to the views, principles and measures, as salutary as they are in accord with the most self-evident conceptions of the law of nations, promising and solemnly binding ourself, just as His Majesty the Emperor binds himself with us, to observe, to execute, and to guarantee all the points and stipulations aforesaid.

In faith whereof we have signed the present act and have hereto affixed our seal.

Given at St. Petersburg, October 19, 1781<sup>1</sup> and the twentieth year of our reign.

[L.S.] CATHERINE

COUNT JOHN D'OSTERMANN

<sup>1</sup>October 30, 1781, new style.

**Act signed by the Empress of Russia concerning the Adoption of the Principles of the Armed Neutrality as Universal Rules for the Conduct of Naval War, October 30, 1781<sup>1</sup>**

We, Catherine II, by the grace of God Empress and Autocrat of all the Russias, of Muscovy, Kiovia, Vladimir, Novgorod, Czarina of Casan, Czarina of Astrakhan, etc., etc., etc.

As the desire to see the restoration of tranquillity in Europe, which animates us together with His Majesty the Emperor of the Romans, King of Hungary and of Bohemia, has led us to unite our efforts with those of His Imperial and Royal Apostolic Majesty to hasten so salutary event, and as we have to this end, in concert with him, offered our mediation, which has been equally accepted by the belligerent Powers, we have, moreover, mutually agreed to work in concert, when peace shall have been restored, to secure the permanent establishment of the principles on the rights of neutrality, which are the subject of the public act of acceptance which we have this day signed.

Therefore we propose, and we bind ourselves by the present act with His Majesty the Emperor of the Romans, who for his part promises and binds himself with us, to take up conjointly and in the most effectual manner with the naval Powers in general the question of having the said principles accepted and recognized as the basis of a universal jurisprudence on the rights of neutral nations in all naval wars which may hereafter occur.

In faith whereof we have signed the present act with our own hand and have hereto affixed our seal.

Given at St. Petersburg, October 19<sup>2</sup> in the year of grace one thousand seven hundred and eighty one and the twentieth year of our reign.

[L. S.] CATHERINE

COUNT JOHN D'OSTERMANN

<sup>1</sup>Translation. French text, F. Martens, *Traité et Conventions conclus par la Russie*, vol. 2, p. 129.

<sup>2</sup>October 30, new style.

**Extract from an Official Despatch from the Court of Denmark to M. Schumacher, Chargé d'Affaires at St. Petersburg, relative to the Operations of an Armed Neutrality<sup>1</sup>**

I take for the basis of all our operations a grand fleet stationed in the channel, and then I think the following the proper means that are to be observed at the Court where you are :

First, Before all things, the grand fleet being thus stationed, the contracting Powers are to agree on the number of ships that every one is to send, and on everything relative thereto.

Secondly, They shall get the King of Prussia, and the Emperor, etc., etc., to approve of the heads of the Russian declaration as soon as possible.

Thirdly, In case the peace should not take place this winter, and the war be continued the summer following, the wise and prudent Count Panin will not fail, as soon as the fleet has taken its station, to make the most pressing and serious instances with the Court of London, in order to determine it to a declaration conformably to that of the Courts of Versailles and Madrid; for it is certain that the Court of London has nothing else in view than to elude the plans and efforts of Russia, to gain time, and to seize the opportunity of a lucky moment to take revenge. You ask me, Sir, why I think the Empress harbours such designs? I answer you because Russia seems to have a mind to fit out a great fleet, while a very moderate number of vessels would be enough for the security of neutral navigation. The object is really worth the while, if the design is, to turn the embarrassment of England to the common good of mankind.

Fourthly, Should England refuse to comply with this system of equity, then recourse must be had to menaces, remonstrances, reprisals and other disagreeable means that may serve to justify such beneficial and vast designs. I never can think, that England should mean to stand it out against a fleet of fifty sail.

Fifthly, This point being once gained by a vigorous and unforeseen blow, there remains nothing more, but to digest and form the code of maritime laws, which cannot be done with more impartiality, than under the eyes of the benefactress of Europe, and under the direction

<sup>1</sup>*The Secret History of the Armed Neutrality*, pp. 120, 227.

of her great Minister. This code shall pass into a law at the future pacification. In the meantime, a less numerous fleet will be sufficient to watch the English and Spaniards, and to make them respect the heads of the declaration. I dread the English, and the incertitude of the time to come: I do not trust convoys, nor dispersed forces, neither do I think that the union of the allied Powers will be of a long standing. The iron must be struck while it is hot: with the Empress at the head, every thing may be done, every thing may be obtained, her threats alone made the peace of Teschen; but if there be any question of a greater equipment for the next year, I beg you to direct matters in such a manner, that we be informed of the proposal in the month of November.

**Prussian Declaration and Ordinance concerning Navigation,  
November 3, 1781<sup>1</sup>**

His Royal Majesty the King of Prussia has indeed, by his first thorough-going declaration of April 30<sup>2</sup> of the present year already sufficiently acquainted every one with the fact that during the present war His Majesty intends to have a strict neutrality observed and navigation of his subjects so conducted that in availing themselves of their natural freedom, navigation may not be misused to such injury of the belligerent Powers as would warrant the latter, for good reasons, to complain. As, however, it is being stated publicly and in some localities complaint is being made, that foreign ships, even ships belonging to the belligerent nations are making use of the royal flag, and under its protection are carrying on an illicit trade, His Royal Majesty declares solemnly, in consequence, that the use of his flag has been granted to no one and that no passes will be issued to any one, except to his veritable and true subjects who as such are really residing in his lands and are owners of houses, property and possessions, and that accordingly, if other and foreign shippers, such as are not provided with Prussian passes, make use of the Prussian flag which His Majesty can not prevent on the open sea, His Majesty will not afford them either

<sup>1</sup>Translation. German text, Martens, *Recueil* 2d ed., vol. 3, p. 290.

<sup>2</sup>*Ante*, p. 391.

protection or assistance, but will leave them to their own fate. His Royal Majesty can therefore not be held responsible for such use of the Prussian flag, which His Majesty has not authorized and can not readily prevent; and His Majesty expects therefore from the sense of justice of the belligerent Powers that they will not hold the true Prussian mariners accountable for such use of his flag, nor make them suffer therefor.

In view of the fact that safe navigation and observance of strict neutrality do not depend so much upon the flag as upon the genuine passes which mariners, to establish their identity, must secure from their national authorities, therefore, to obviate any and every possible misuse, His Royal Majesty directs and commands herewith, earnestly and strictly, all his subjects who carry on navigation and maritime trade, that, if they intend to send forth ships and ship cargoes to distant seas, lakes, coasts and regions of the earth, they no longer shall, as customary hitherto, apply for passes to magistrates or subordinate boards, but at Berlin, to the Royal Department for Foreign Affairs where they shall be supplied with passes under the royal seal, provided that they have in advance secured the customary bills of lading and statements regarding the ship's cargo, together with dependable proof showing that the ship out-fitters and owners, all of whose names must be stated specifically, are veritable and real royal Prussian subjects, authenticated by attestations from the magistrates and war and domain boards of each province, and thus have qualified themselves to receive a royal passport. From this ordinance remain excluded those Prussian shippers navigating in the Baltic Sea and not outside the Oere-sound and the Great and Lesser Belt; to save time, these navigators may secure passes from the hitherto customary places, and those who engage in short trips in the North Sea from the ports of East Friesland, to the ports of Great Britain and the United Netherlands, who for want of time and because of the great distance and inconsiderable cargoes can not conveniently secure passes from Berlin, may, as hitherto, apply for and receive passes from the magistrate of the city of Emden and from the royal war and domain boards of the principality of East Friesland under the proper supervision of the latter.

As this ordinance is made known for the information and observance of all Royal Prussian subjects, in all other respects, the first royal declaration of April 30 is to be observed and is hereby renewed

and confirmed, so that both royal ordinances shall serve as prescription and line of conduct to the royal subjects who engage in navigation and maritime commerce.

Given at Berlin, November 3, 1781.

By special order of His Royal Majesty.

E. F. v. HERZBERG  
FINKENSTEIN

**Swedish Note to Prussia regarding Prussia's Accession to the  
Armed Neutrality, December 5, 1781<sup>1</sup>**

The King being informed of the act passed the 8th of May, of the present year between the Courts of Petersburg and Berlin, felt, with an extreme satisfaction, how much strength the beneficial system of the navigation and trade of neutral nations was about to gain by the engagements which His Prussian Majesty had lately contracted, and by which he concurs to support the principles already adopted, and generally announced on the part of the King and his allies.

His Majesty felt no less satisfaction when he heard that His Prussian Majesty had a mind to extend these very engagements, by rendering them common with those of His Majesty; and as nothing can be added to the maritime convention concluded last year July 21st/August 1st, between the Courts of Sweden and Russia,<sup>2</sup> His Majesty would be very glad, if His Prussian Majesty was pleased to accede to the same convention; in which case, His Majesty would do every thing in his power to facilitate the arrangements concerning the stipulations that are to be substituted by His Prussian Majesty, instead of those contained in the fourth and fifth articles of the convention, whereby the mutual protection is fixed which the allies have promised to give one another; and the ties of this alliance could not be rendered stronger, than by expressly determining the reciprocal assistance to which the high contracting Parties bind themselves, and thus making every one partake both of the essential obligations and advantages of this union.

<sup>1</sup>*The Secret History of the Armed Neutrality*, pp. 128, 234.

<sup>2</sup>*Ante*, p. 311.



If the chief object of the convention concluded between the sovereigns of the north consists in the conservation of the dearest and most precious rights of mankind—if these Powers see the necessity of taking all possible care to establish a code of maritime laws, in which these rights are settled in favor of the neutral nations;—nothing can be more conformable to so great and glorious a design, than that His Prussian Majesty should employ all the influence, which he has so justly acquired in the affairs of Europe; nothing can be more conformable to the King's wishes, than to multiply the ties with which he is already so firmly attached to His Prussian Majesty. This is what the subscribed is ordered to declare, in answer to the note delivered by Baron de Keller, and dated the 20th April of the present year.

Done at Stockholm, the 5th of December, 1781.

**Detailed Elucidation of the Prussian Ordinances of April 30 and November 3, 1781, concerning Commerce and Navigation, December 8, 1781<sup>1</sup>**

Through His Royal Majesty's ordinances of April 30 and November 3 of this year,<sup>2</sup> the royal subjects have already been advised in what manner, for their greater security, they should organize their navigation and maritime commerce; in view of the fact, however, that certain doubts still exist and certain questions have arisen in regard thereto, therefore, in order to remove these doubts and dispose of these questions, in the name and on the part of His Royal Majesty, the following is additionally established, ordered and published for the guidance of royal Prussian subjects, engaging in navigation and maritime commerce:

**ARTICLE 1**

It is self-evident that, since Prussian ships which put to sea before the issuance of the ordinance of November 3, could not have provided themselves with the court passes prescribed therein by the Royal

<sup>1</sup>Translation. German text, Martens, *Recueil*, 2d ed., vol. 3, p. 293.

<sup>2</sup>*Ante*, pp. 391, 411.

Ministry for Foreign Affairs, the lack of such passes can not accrue to their disadvantage in any courts of justice nor in any other places, and that the hitherto customary passes with which they put to sea must retain their force and validity and ensure those ships up to the time of their return to Prussian ports. In order, however, still further to obviate all difficulties, it is hereby established, that the necessity of securing court passes from Berlin direct, shall go in force, beginning only with January 1, 1782, so that every one may have sufficient time to procure such passes.

#### ARTICLE 2

It remains established that small ships not carrying more than 100 tons burthen, as well as such as navigate only in the Baltic and North Sea, and not outside of the channel separating France and England, need not secure their passes from Berlin if they do not find it convenient to do so, but at their pleasure as hitherto, in order to save time, from the admiralties and war and domain boards of each province, as well as from the magistrates of the cities; and to that end, the said boards are hereby strictly exhorted, to exercise the greatest care, to prevent all misuse, and in strict compliance with the royal ordinances, that passes shall, in consequence, be issued to none but veritable and real royal subjects. By the declaration of November 3, it is solely His Royal Majesty's fatherly intention to procure the greater security through the maritime passes to be issued through his Ministry of Foreign Affairs which is best acquainted with the general state of affairs, to those Prussian ships which sail beyond the channel into the great ocean and engage in navigation and maritime commerce in those distant seas, countries and coasts, and to prevent, as far as possible, prejudicial incidents.

#### ARTICLE 3

As the skippers, before their ships have taken their full cargo on board, can not properly send to Berlin complete bills of lading of their cargoes, therefore, those requiring direct royal court passes, shall not be required to procure more than general certificates and vouchers from the admiralties, boards and magistrates regarding the ownership of the vessel, and in case the pass is also to indicate the cargo of the ship, then the quality of the cargo of which it consists, all of which will suffice to form judgment whether the cargo is free and unprohibited, and whether thereupon the court may issue passes;

which he ordered to be sent the 8th of July 1780,<sup>1</sup> to the belligerent Courts; and for their support, His Majesty has concluded a maritime convention, signed at Copenhagen the 9th of July, with Her Majesty the Empress of Russia,<sup>2</sup> which he here notifies to His Prussian Majesty with great pleasure.

These principles being alone capable of establishing the security of commerce, and of the navigation of neutral nations, the King cannot but ardently desire to see them acknowledged by all the Powers of Europe, and to feel, in consequence of this desire, all the importance of their being adopted by His Prussian Majesty.

Nothing would therefore be more conformable to the wishes of His Majesty, than to hear that it pleased His Prussian Majesty to accede to this convention, such as it was concluded between the Courts of Denmark and Russia, in which case His Majesty would contribute, on his side, as far as possible, towards facilitating all the dispositions concerning the stipulations that are to be put into the room of those contained in the fourth and fifth articles of this convention; whereby, the high contracting Parties promise themselves mutual protection, and while they expressly determine the common efforts and reciprocal assistance, the tie of this alliance is formed in the most natural manner, and every one made to partake both of all that is essential in the obligations and advantages resulting from their union.

Never was the object more important, or the end of an alliance more glorious, than that which was the soul of Her Imperial Majesty's resolutions, when she proposed to the other Powers of the north this respectable convention, which must one day produce the maritime code promised by that great Princess, to the whole universe: This alliance has nothing in view, but the preservation of rights, the dearest and most precious to mankind; and who could be more capable of promoting them, than a sovereign of so consummate wisdom, as His Prussian Majesty is, whose influence on the affairs of Europe, is so extensive, and whose friendship is so justly courted?

This is what the King ordered the underwritten to say in answer to the note delivered by M. von Bismarck, dated the 15th of August.

From the Royal Department for Foreign affairs, Copenhagen the 17th of December, 1781.

ROSENCRONE

<sup>1</sup>*Ante*, p. 297.

<sup>2</sup>*Ante*, p. 299.

**Swedish Note to Prussia regarding Swedish Accession to the Convention of May 19, 1781, between Russia and Prussia, for the Maintenance of the Freedom of Neutral Commerce and Navigation, May 2, 1782<sup>1</sup>**

When the King granted, last year, to the subjects of His Prussian Majesty, the protection which that Monarch desired for the security of their commerce and navigation, His Majesty, with a real satisfaction, seized the opportunity of showing, at the same time, his attachment to the principles of free neutral navigation, which he has constantly followed, together with the sentiments of personal regard and friendship for His Majesty the King of Prussia. His Majesty having afterwards been invited to join the act passed at Petersburg the 8th of May 1781,<sup>2</sup> between His Prussian Majesty and the Empress of Russia, there could be no question but about choosing the manner the most simple, and the most natural to the engagements which His Majesty was going to contract. The King, in consequence, proposed to His Majesty the King of Prussia, to join the maritime convention, formerly, and since the year 1780, concluded between the King and Her Imperial Majesty of Russia, by observing the different obligations which the different situations of the two kingdoms should render necessary.

But the King of Prussia having, by the means of a second note, which was delivered by the subscribed by his Envoy, intimated a desire, for reasons contained in the same note, of joining the above-mentioned act of the 8th of May 1781, His Majesty thought himself obliged to consult nothing but his friendship for the King, together with the advantage which must accrue to the system of free neutral commerce, by the accession of a Prince whose credit and importance are so universally established. In consequence the King has ordered the subscribed to notify to Baron de Keller, in answer to his note of the 22nd of February, that the King is resolved to comply with the desire of His Prussian Majesty: In conformity of which, he must, in like manner, inform Baron de Keller, that Baron de Nolken, the King's Envoy Extraordinary at the Court of Petersburg, will immediately receive his orders for acceding by the means of formal declarations from His Majesty, to the act concluded in this city, the 8th of May last year; and, in consequence of the friendship subsisting be-

<sup>1</sup>*The Secret History of the Armed Neutrality*, pp. 131, 237.

<sup>2</sup>May 19, 1781, new style, *ante*, p. 397.

tween the two Crowns, the subscribed has the honour of subjoining here the copies of those declarations which Baron de Nolken will be ordered to deliver on one side, to the minister of Her Imperial Majesty of all the Russias, and on the other to Count de Goertz, His Prussian Majesty's Envoy Extraordinary residing at the said Court; on condition, that the acts of acceptance which may be found necessary for carrying so beneficial a work to perfection, be delivered by the two respective Courts to Baron de Nolken.

His Majesty feels the greater pleasure in answering, on this occasion, the desire of the King his uncle, as he hopes, that this new union will strengthen the ties of friendship by which the two sovereigns are already, in so many respects, united.

**Convention between Russia and Portugal for the Maintenance of the Freedom of Neutral Commerce and Navigation, by which Portugal accedes to the System of Armed Neutrality, July 24, 1782<sup>1</sup>**

Her Imperial Majesty of all the Russias having invited Her Majesty the Queen of Portugal to cooperate with her in the consolidation of the principles of neutrality on the sea and in the maintenance of freedom of the maritime commerce and the navigation of neutral Powers, in conformity with her declaration of February 28, 1780,<sup>2</sup> transmitted in her name to the belligerent Powers; the Queen, because of the sincere friendship uniting Her Imperial Majesty to Her Most Faithful Majesty, as well as for the interest of Europe in general and of her countries and subjects in particular, wishes to contribute her share to the execution of the principles and measures, which are as salutary as they are in accord with the clearest conceptions of the law of nations. And therefore she has determined to appoint, in concert with Her Majesty the Queen of Portugal, plenipotentiaries, and to instruct them to conclude a convention, the spirit and content of which shall, in all respects, be in accord with these same intentions.

<sup>1</sup>Translation. For the French text, see Appendix, p. 666.

<sup>2</sup>*Ante*, p. 273.

To this end Their said Majesties have chosen, appointed, and authorized, Her Imperial Majesty of all the Russias, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, Senator, and Chevalier of the Orders of St. Alexander-Newsky and of St. Anne; Alexander Besborodka, Major General of her Armies, Member of the Department of Foreign Affairs, and Colonel commanding the Kiovia Regiment of Militia of Little Russia; and Pierre de Bacounin, her Councilor of State, Member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne: and Her Majesty the Queen of Portugal, Francis Joseph d'Horta-Machado of her Council, and her Minister Plenipotentiary at the Imperial Court of Russia; who after having exchanged their full powers, found to be in good and due form, have agreed on the following articles:

#### ARTICLE 1

Her Majesty the Empress of all the Russias and Her Most Faithful Majesty, convinced of the solidity and the indisputable self-evidence of the principles set forth in the aforesaid declaration of February 28, 1780, which may be reduced in substance to the five following points:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects and merchandise belonging to subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise

(3) That nothing shall be considered contraband except the merchandise enumerated in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1766.<sup>1</sup>

(4) That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed a proportionate number of vessels sufficiently near to render access thereto clearly dangerous.

(5) Finally, that these principles shall serve as the rule in proceedings and judgments as to the legality of prizes.

Their Majesties declare that, not only do they fully adhere to the same principles, but that on all occasions they will cooperate effectually to maintain them in all their force and effect, and that they will see to their strict enforcement.

<sup>1</sup>*Ante*, p. 342.

## ARTICLE 2

The present convention shall not, in any respect, impair the force of treaties now existing between the Court of Russia or of Portugal and any other Court of Europe whatsoever. But those treaties and the stipulations therein contained shall continue to have the same binding force on both parties as in the past, and this convention can never invalidate them, still less infringe upon them.

## ARTICLE 3

The high contracting Powers shall continue to observe the strictest neutrality and shall see to the most scrupulous enforcement of the prohibitions against commerce in contraband on the part of their respective subjects with any one of the Powers now at war or which may hereafter enter into the war, including specifically under the head of contraband those goods which in the aforesaid Articles 10 and 11 of the treaty of commerce, concluded between Russia and Great Britain on June 20, 1766, are considered as such.

## ARTICLE 4

If, in spite of the care exercised to this end, Russian or Portuguese merchant ships should be taken or insulted by any vessels of the belligerent Powers, the complaints and representations of the injured Power shall be supported in the most effectual manner by the other. And if, contrary to all expectation, justice should be refused on these complaints, they shall continue to take counsel with each other as to the method that is best calculated to secure indemnification through just reprisals.

## ARTICLE 5

If either of the two Powers or both of them should, as a result of or in contempt of the present convention, be disturbed or molested, then they shall make common cause for their mutual defense, and shall work in concert in order to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

## ARTICLE 6

The present stipulations shall be considered by both Parties as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrality.

## ARTICLE 7

The Powers shall communicate in a friendly way their present mutual agreement to all the Powers that are now at war.

## ARTICLE 8

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged within four months from the day on which it is signed, or sooner if possible.

In faith whereof we, the plenipotentiaries, by virtue of our full powers, have signed and have hereto affixed the seals of our arms.

Done at St. Petersburg, July 13, 1782.<sup>1</sup>

[L. S.] COUNT JOHN D'OSTERMANN

[L. S.] ALEXANDER DE BESBORODKA

[L. S.] PIERRE DE BACOUNIN

[L. S.] FRANC. JOSEPH D'HORTA MACHADO

**Memorial from the King of Sweden to the Empress of Russia regarding a General Peace and a Code of Maritime Law, August 7, 1782<sup>2</sup>**

If the ties, which the King has had the satisfaction of forming with Her Majesty the Empress of Russia, during the course of the present war, for the support of the cause of neutral nations, could not but be infinitely dear to him, on account of the zealous and lasting advantages which this association must produce for all nations, and by reason of the honour of partaking with that sovereign, the glory which must so justly accrue to him; these very ties are no less precious to him, because they furnish him with opportunities of giving Her Imperial Majesty, and of receiving from her, marks of that entire confidence, the result of the intimacy which subsists between the two sovereigns, and of the perfect harmony of their mutual interest. The King has

<sup>1</sup>July 24, 1782, new style.

<sup>2</sup>*The Secret History of the Armed Neutrality*, pp. 139, 244.



received a new proof of it, by the friendship which Her Majesty had for him, in consulting him on the measures to be taken with regard to the Republic of Holland, supposing it should continue to decline entering into a particular peace with England, even if the latter could be prevailed with to settle the basis, or the principles of the armed neutrality to be declared and avowed to all the neutral Powers. His Majesty thinks it impossible to show his thankfulness for Her Majesty's confidence, by which he was so sensibly affected, in a clearer manner, than by answering it with all that sincerity which true friendship demands, and which nothing but true friendship alone can inspire. All Europe has acknowledged, in the measures of which Her Imperial Majesty has taken since the breaking out of the war between England and Holland, towards establishing the peace between these two Powers, the sentiments that animate all the actions of that sovereign, her desire of procuring the good of mankind, in general, and that of her allies in particular. The King has followed and applauded these measures, with all that interest he ever feels when the Empress's glory is concerned. He was persuaded that Her Imperial Majesty, having considered the state and situation of the Republic of Holland, must have found, by her great spirit of penetration, with which she is always sure of seeing things in their proper light, new reasons for augmenting her desire, which the goodness of her heart first inspired, of bringing a peace about beneficial for England, but necessary for Holland. Indeed, one needs only to cast his eyes on the situation the Republic was in, before England's declaration of war, to convince himself how much this event was to its disadvantage, and how fatal it may still prove to its flourishing State, its extensive and lucrative commerce, the fruits both of a long peace and its natural industry; in a word, every thing contributed to render a war formidable to an independent republic, enjoying all the advantages which had been secured to it by the several treaties of commerce, concluded between it and the belligerent Powers; in which state, its breaking with England was a true misfortune for the Republic; and it seems the little solidity of reasons that occasion the rupture, serves to render its case more interesting. One cannot but plainly see that a simple project of a treaty of commerce; a treaty which must needs presuppose the independence of the American States being acknowledged by England, because it can never have any effect before that period, is but a weak reason for breaking with an old friend and ally; if this reason be maturely

weighed, by an equitable posterity, it cannot fail of being considered as a pretext for covering the dissatisfaction of a rival nation, in point of trade, and of a ministry which is accustomed to let itself be hurried away into impetuous measures. These truths can as little escape the enlightened wisdom of Her Imperial Majesty, as they can fail of affecting her heart, the first emotion of which led her to concert means for preventing the evils with which the Republic was threatened, by procuring to it a speedy peace. It was a new misfortune for Holland, that England would not at that time answer the generous views of the Empress; and if the Republic saw itself thereby deprived of the effects of Her Majesty's good-will, nevertheless, by what has since happened, the Republic must be persuaded, that it owes Her Imperial Majesty lasting thanks for her intentions in its favour. It is, indeed, difficult to imagine a more fatal change than that which the situation of the Republic has experienced, by a war of so short a duration. With the loss of an immense commerce, its only strength, its principal resource, it has forfeited also a considerable fishery, which alone was worth a mine of gold to it. Its colonies in America have been attacked, and nobody even knows in whose hands they may be at present. The greater part of its possessions in the East Indies, conquered and preserved with so great expenses and cares, are lost to it: And, in fine, to render its misfortunes complete, it sees itself blocked up, the greater part of the year, in its own harbours, and its vessels hindered from going in or out. The natural effect of all those accumulated calamities has been, to draw the Republic into the necessity of siding more closely with France, against the common enemy, and to strengthen the ties which alone are its resource during the war, and must procure its security at the peace. It was under the necessity of throwing itself so entirely into the arms of that Power, that little is wanting to render it entirely dependent on France; and the demolition of the barrier towns has completed a system which the necessity of war had begun. Thus, by a series of disagreeable circumstances, the Republic finds itself out of condition to accept the benefits which Her Imperial Majesty has never ceased to offer it, and which its enemy has hindered it from turning to its advantage, at the time when it might have been able to do so. If we suppose it possible, however, to remove the obstacles which are at present in the way of a separate peace between England and Holland, it would then become the province of the Empress, as mediatrix be-

tween the two Powers, to weigh in the scales of natural equity, if the Republic is to make its peace without being replaced almost into the same state as before the war breaking out, without being put in possession of its colonies and comptoirs in the East and West Indies, and without receiving some indemnification, for the immense losses caused by the stopping of its commerce only. It is true, England proposes the renewing of the treaty of 1674.<sup>1</sup> It even offers to acknowledge, with regard to the Republic, those principles which have been adopted by the northern Powers; and this last offer is without doubt a very favourable omen for these Powers, but it is not yet generally made know; and even, supposing it to be so, would that be enough for the Dutch? This is a point on which the King entirely suspends his opinion: He has not taken the defence of their cause upon himself, nor does he intend to plead it here: the only thing he means to show, is, that a particular peace between England and Holland will be incomparably more difficult to bring about at the present juncture, than it was immediately after the breaking out of the war; that is to say, at the time the Empress made her first offers of mediation.

The King saw, with regret, the obstacles that opposed the glorious design to which the Empress's philanthropy, and her benevolent spirit, had prompted her; and a just acknowledgment of the confidence she showed him, and his friendship for her person, oblige him to present those obstacles to the eyes of Her Imperial Majesty, in the same light in which he sees them himself; but at the same time, His Majesty finds, to his still greater pleasure, in the known sentiments and good offices which Her Imperial Majesty has already offered for a general pacification, and in the association of the northern Powers, the sufficient means of fully attaining, in the present circumstances, the glorious aim which Her Imperial Majesty and her allies have proposed to themselves; and, by one or the other of these measures, His Majesty feels a true satisfaction in being able to disclose his sentiments on these subjects towards Her Imperial Majesty, with all that confidence which her great penetration and her perfect friendship, so precious to His Majesty, inspires him with.

It is evident, that since the change that took place last Spring in the English Ministry, affairs are greatly hastening towards a general

<sup>1</sup>Treaty of December 1, 1674. Dumont, vol. 7, pt. 1, p. 282.

pacification. France and England, both alike tired of an expensive war, seeing themselves stopped by the circumstance of America's independency, an object which the former must absolutely insist upon, and the late English Ministry always obstinately refused to comply with; but that obstacle seeming to be removed, by the sentiments which the following Ministry announced, and the present appears to have equally adopted, a direct negotiation was soon opened at Paris. It is true, that the expenses of the present campaign, the desire of seeing its issue, and the interest of the French allies, especially Spain, may probably stop the speedy effect of this negotiation for a moment, but the campaign being once finished, it may greatly be presumed that matters will soon be settled, and the more so, as the expedition which Spain is going to undertake against Gibraltar, must by that time either have succeeded or failed.

In this state of affairs, it seems less to be feared that the belligerent Powers will refuse making their peace, than it is to be dreaded that they will finish their differences of their own accord, and without the intervention of any one whoever. It is clear how prejudicial such a peace may prove to the cause of the neutral Powers, a cause which Her Imperial Majesty, together with the King and her other allies, have so gloriously supported, and hitherto with so much success. One must be persuaded that England never cordially approved of the principles adopted in the convention of the armed neutrality, and if the House of Bourbon seemed less inclined to oppose them, yet their object is too foreign to its interest, that one should expect its meddling with them in an essential manner at a peace where France will have so many concerns, infinitely dearer to it to settle.

Every thing seems therefore, in this juncture, to invite Her Imperial Majesty, the Empress of Russia, and her allies, to crown, by a step which has all appearance of proving decisive, the noble and glorious efforts which they have never ceased to make for settling the rights of neutral nations on a solid, and immovable basis. To this end the King proposes his opinion to the great penetration of the Empress, that the only effectual means of gaining this point, would be, that Her Imperial Majesty, together with all the allies that have taken part in the maritime convention, should propose to the belligerent Powers the establishing of the congress, in which the different concerns both of the Powers at war, and of the neutral States, should be examined and terminated. The Emperor of the Romans having

hitherto shared the trouble which Her Majesty the Empress gave herself for the general pacification, and being besides tied to the concerns of the naval Powers, associated for the support of the liberty of trade, by engagements which that Prince has on that account entered into with the Empress, will certainly receive with joy every overture that Her Majesty would make to him for joining the northern Powers in such a step. His mediation already offered, his power and his credit with the different States at war cannot fail of giving his representations a great weight, and of accelerating the success of two objects which are proposed by a congress, viz., the pacification, and the settling of a maritime code of laws. For the same end, the King leaves it to the Empress's decision, whether it would not be fit to employ her credit with the King of Prussia, to engage that Prince to espouse, with all that warmth which the importance of the subject requires, the concerns of the common cause: this would be nothing more than a consequence drawn from those principles which made him desire entering into the association of the maritime Powers: and his great personal qualities, together with that consideration which he has so deservedly acquired by them, would render every step that he should take effectually advantageous to the general good.

It is easy to foresee what effect an effort made of a sudden, and at the same time, by the mightiest States of Europe, must inevitably have on the belligerent Powers. This impression will be the stronger, as they cannot but soon feel that what is proposed to them is by no means against their interest, nor can have any noxious influence on it. On the contrary, the projected congress seems to be of such a nature, as must render it agreeable to the whole world. The plenipotentiaries of the States at war, seeing themselves assembled in one and the same place, will examine and finish with greater easiness the differences of their Courts. Should any one of the neutral Powers be accepted to execute the office of mediator between any of the belligerent Powers, or among them all in general, that Court will employ all its endeavours to accomplish its task. The rest may watch over their cause, and, by this means, a double advantage will be gained, the settling of solid peace, and the establishing of maritime laws, with all that splendor and all that security, with which those of the German Empire were fixed by the treaty of Westphalia; and by this the aim will be attained, which Her Majesty and her allies ever had in view by their maritime convention, and to which all their steps have

been constantly directed; and a glorious and useful work will be finished, which will ever claim the gratitude of future ages.

It is clear that, in order to arrive at a general and a lasting peace, in the present circumstances, the plenipotentiaries of the United Provinces of America must be called to the congress; but this article cannot give rise to any difficulty, as England can have no more repugnance to treat with them, since the British Ministers have loudly exclaimed against the obstinacy of the late Ministry, in endeavouring to reduce North America; and those who are at present in place, declare, that they never will refuse acknowledging its independency.

If the plan which the King proposes be adopted, nothing will remain, but to determine the terms in which the proposals are to be couched, and they will be easily agreed upon; and the necessary instructions in consequence given to the Ministers residing at the belligerent Courts. The King is of opinion, that it is impossible to give these proposals too great weight, and that it would be therefore essential to have them made at the same time to every one of these Courts, by the Ministers of all those Powers that contributed towards that work. It will be likewise easy to agree on the place where the congress is to be held; Aix la Chapelle, Mentz, Frankfort, or any other free imperial town, the nearest that is possible for all those who may have any thing to do there, will serve the turn.

The King expects, with a great deal of concern, to hear Her Imperial Majesty's sentiments on the plan which he has laid before her eyes; but whatever they be, His Majesty is persuaded, that the Empress must find in it a proof of his tender friendship, his perfect confidence, his love of their mutual glory, and his invariable adherence to principles which he prides himself in having constantly followed with Her Imperial Majesty.

Done at Drottningholm, the 7th of August, 1782.

**Reply of the Empress of Russia to the King of Sweden regarding a General Peace and a Code of Maritime Law, September 7, 1782<sup>1</sup>**

The Empress was very sensible of the confidence and cordiality with which His Majesty the King of Sweden explained himself to-

<sup>1</sup>*The Secret History of the Armed Neutrality*, pp. 154, 259.

wards her, in a note lately delivered by his Chargé d'Affaires, on the present situation of Europe.

Her Majesty, entirely convinced that nothing can be added to the judicious reflections, and to the choice of the means proposed by the King, with respect to the grand aim of a general pacification, and the consolidation of the neutral system which was so happily founded by their united efforts, can assure His Swedish Majesty, that nothing relating hereto has escaped her attention.

The Empress has ever been engaged, down to the present time, in concert with the Emperor of the Romans, her co-mediator, and her co-partner, by his accession to the same principles, with the essential task of protecting the rights of neutral nations; and she will certainly omit nothing, at the conclusion of a general peace between the belligerent Powers, which may add force to the said system, and render it of a permanent duration, and to make it pass over by the consent and accession of those very Powers to it, into a general law for all the nations.

As for the rest, the King's zealous sentiments in favour of the same concerns, his impartiality, his penetration, which are so well known to the Empress, leave Her Majesty no room to doubt, that in time and place, His Swedish Majesty will be pleased to cooperate with all his force towards the forwarding of the common cause, and to bring it to a good and happy end.

Done at St. Petersburg, the 7th of September, 1782.

#### **Austrian Netherlands Ordinance concerning Maritime Regulations, December 12, 1782<sup>1</sup>**

Joseph, etc., etc. The protection that we have constantly given to the commerce and navigation of our subjects in the Netherlands requiring that we have accurate knowledge of all the vessels that belong to our said subjects and that sail under the flag of this country, and that no abuse of this flag be tolerated nor of ship's registers pertaining thereto, we have, at the instance of our very dear and well-beloved sister, Maria Christina, Princess Royal of Hungary and Bohemia, Archduchess of Austria, etc., etc., and of our very dear and well-

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 3, p. 297.

beloved brother-in-law and cousin, Albert Casimir, Prince Royal of Poland and Lithuania, Duke of Saxe Teschen, etc., etc., our Lieutenant Governors and Captains General of the Netherlands, etc., ordered and decreed, and hereby order and decree the following articles:

#### ARTICLE 1

All of our subjects in the Netherlands who own sea-going vessels are required to furnish a declaration, signed by them, within six weeks after publication of the present ordinance, free of carrier's charge, to the admiralty office at Ostend, Bruges, or Nieuport, respectively, according to the city where the vessels in question procured their ship's registers, and in the case of vessels whose registers were obtained in other cities of this country, the declaration shall be made to the office at Ostend. These declarations must contain (1) the name of the vessel, (2) its character and capacity in nautical tons, (3) whether it was built in this country or in a foreign country, and in the latter case indicate, so far as possible, in what country it was built, where it was purchased, and furnish evidence of the purchase and present ownership of the vessel, (4) the name of the captain commanding it, (5) in what port or waters its owners know or presume it now to be, (6) the date and place where the ship's register was procured with which the vessel is furnished; all this under penalty of a fine of 200 florins for every vessel whose declaration shall not have been made within the prescribed time.

#### ARTICLE 2

With regard to vessels which our subjects shall acquire after the publication of the present ordinance, they shall be required, before these vessels may put to sea, to procure registers in the usual form, which must be certified at one of the admiralty offices, at Ostend, Bruges, or Nieuport, respectively, under penalty of invalidity. The owners shall at the same time deliver a separate declaration, containing (1) the name of the vessel, (2) its character and tonnage, (3) whether it was built in this country or in a foreign country, indicating, in the latter case, in what country it was built, where it was purchased, producing evidence of the purchase, (4) the name of the captain who is to command the vessel, (5) in what port it is at present; and the certificate shall state that the present article has been complied with, all under the same penalty decreed in the preceding article.



## ARTICLE 3

The owners of vessels who shall sell or transfer, or have other persons sell or transfer, vessels belonging to them, must, within fifteen days at the outside, give a declaration thereof to one of the offices of the admiralty, at Ostend, Bruges, or Nieuport, respectively, according to the city where the ship's registers may have been delivered, and to the admiralty office at Ostend, if the registers were furnished in any other city of this country. They must return to the admiralty office the registers and other papers that they shall receive from the magistrates for the vessels sold or transferred; which return must be made at the same time as the declaration, if the sale or transfer is made in the ports or places of this country, and within one month, or other period to be determined by the admiralty officials, if the sale is made in foreign ports, under penalty of confiscation of the value of the vessels and 4,000 florins fine, one-third of the amount confiscated and of the fine to go to the informer.

## ARTICLE 4

Those who shall be convicted of having lent their name to conceal or disguise foreign ownership of a vessel, in whole or in part, by obtaining registry in this country, or those who shall have yielded, lent, or allowed the use of their registers for other vessels than that for which the register was originally furnished, those who shall have altered or changed in any manner whatsoever their registers, those who, navigating under the flag of this country, shall at the same time be supplied with and make use of a foreign register, or who shall make use of foreign passes, passports, or other papers for their vessel, shall for each offense be liable to a fine of 6,000 florins, as well as every one of our subjects who shall have cooperated or participated therein; and one-third of this fine shall be paid to the informer. Cases of this character previous to the publication of this ordinance shall remain subject to the usual penalties.

We decree, etc.

Given in our city of Brussels the 12th day of the month of December in the year of Grace 1782, the 12th of our reign in the Roman Empire, and the 3rd of our reign in Hungary and Bohemia.

By the Emperor and King in Council.

DE REUL

**Act by which the King of the Two Sicilies accedes to the System of Armed Neutrality, February 21, 1783<sup>1</sup>**

Her Imperial Majesty of all the Russias, inspired by a generous desire to consolidate the true principles of the right of neutrals on the sea, calculated to maintain the freedom of their navigation and maritime commerce, as set forth in her declaration of February 28, 1780,<sup>2</sup> transmitted to the Powers then at war, has observed with the greatest satisfaction how widely the successive adhesion of different Powers to the same principles has extended their effect. For this reason and because of her just confidence in the friendship of His Sicilian Majesty, she has determined to invite him likewise to strengthen by his co-operation in a work of so great importance; and His said Majesty, recognizing this action to be a mark of friendship as well as a feeling of just confidence in him, in the belief that the said principles are entirely in accord with those which he, like his august father, has constantly followed, ever since the restoration by him of the independent existence of the monarchy of his kingdoms, and such as they are clearly recognized in his treaties with Sweden in the year 1742,<sup>3</sup> with Denmark in 1748,<sup>4</sup> with the States-General of the United Provinces in 1753,<sup>5</sup> the only treaties concluded since the period when the said Kingdoms ceased to belong to other sovereignties, has not hesitated to reply with eagerness.

To this end Their Majesties have deemed it wise to conclude a formal act, in which the said principles shall be set forth, and have appointed as their plenipotentiaries, to wit: Her Imperial Majesty of all the Russias, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, Senator and Chevalier of the Orders of St. Alexander-Newsky, of St. Wladimir of the First Class, and of St. Anne; Alexander de Besborodka, Major General of her Armies, Member of the College of Foreign Affairs, Colonel Commanding the Kiovia Regiment of Militia of Little Russia, Chevalier of the Order of St. Wladimir of the First Class; Pierre de Bacounin, her Councilor of State, Member of the College of Foreign Affairs, Chevalier of the Order of St. Wladimir of the Second Class and of the Order of St. Anne; and His Majesty

<sup>1</sup>Translation. For the French text, see Appendix, p. 669. Ratifications exchanged at St. Petersburg, July 1, 1783.

<sup>2</sup>*Ante*, p. 273.

<sup>3</sup>Treaty of June 3, 1742. Wenck, vol. 2, p. 100.

<sup>4</sup>Treaty of April 6, 1748. *Ibid.*, p. 275.

<sup>5</sup>Treaty of August 27, 1753. *Ibid.*, p. 753.

the King of the Two Sicilies, Don Muzio Gaëta, Duke of St. Nicholas, his Gentleman of the Chamber and his Minister Plenipotentiary at the Imperial Court of Russia; who, having exchanged their full powers, found to be in good and due form, have agreed to the following articles:

#### ARTICLE 1

Her Majesty the Empress of all the Russias and His Majesty the King of the Two Sicilies, convinced of the solidity and of the incontestable self-evidence of the principles set forth in the aforesaid declaration of February 28, 1780, which may be reduced in substance to the five following points:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects and merchandise belonging to subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband of war.

(3) That nothing shall be considered contraband except the merchandise enumerated in Articles 10 and 11 of the treaty of commerce and navigation concluded between Russia and Great Britain on June 20, 1766.<sup>1</sup>

(4) That to determine what constitutes a blockaded port, this designation shall apply only to a port where the attacking Power has stationed a proportionate number of vessels sufficiently near to make access thereto clearly dangerous.

(5) Finally, that these principles, which shall serve as the rule in proceedings and judgments as to the legality of prizes, shall not impair the force of treaties now existing between Their Majesties and other Powers but shall give them additional force.

Their said Majesties declare that, not only do they fully adhere to the same principles, but that on all occasions they will cooperate effectually to maintain them in their full force and effect, and will see to their most scrupulous execution.

#### ARTICLE 2

In any war in which the high contracting Parties, observing absolute neutrality, shall not take part, they shall see to the strictest enforcement of the prohibition of commerce in contraband on the part of

<sup>1</sup>*Ante*, p. 342.

their respective subjects with any one whatsoever of the Powers now at war, or which may hereafter enter into the war.

#### ARTICLE 3

Contraband of war, in which commerce neutrals are forbidden to engage, shall be understood in accordance with the terms of the treaties existing between Russia and Great Britain concluded in 1766, as well as in accordance with the terms of the treaties in force between the Two Sicilies and Denmark, Sweden, and Holland.

#### ARTICLE 4

If, in spite of all their care to this end, merchant vessels of either of the two Powers, should be taken or insulted by any vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other; and if justice should be refused on these complaints, they shall continue to take counsel with each other as to the method best calculated to secure for their subjects full indemnification.

#### ARTICLE 5

If either of the two Powers or both of them, because of or in contempt of the present agreement, should be disturbed, molested, or attacked, they shall then make common cause for their mutual defense, and shall work in concert so as to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

#### ARTICLE 6

These stipulations shall be considered by both Parties as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrals.

#### ARTICLE 7

The two Powers shall communicate in a friendly way their present mutual agreement to all the European Powers in general.

#### ARTICLE 8

The present act shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged within four months from the date of the signing thereof, or sooner if possible.

In faith whereof, we, the plenipotentiaries, by virtue of our full powers, have signed and affixed hereto the seals of our arms.

Done at St. Petersburg, February 10, 1783.<sup>1</sup>

[L.S.] COUNT JOHN D'OSTERMANN

[L.S.] ALEXANDER DE BESBORODKA

[L.S.] PIERRE DE BACOUNIN

[L.S.] MUZIO GAËTA DUKE OF ST. NICHOLAS

### The Signing of Peace Treaties

[Preliminary treaties of peace between Great Britain and France, Great Britain and Spain, and Great Britain and the United States of America, were signed at Versailles, January 20, 1783; definitive treaties were signed on September 3, 1783. A preliminary treaty of peace between Great Britain and the Netherlands was signed at Paris, September 2, 1783; the definitive treaty was signed May 20, 1784.<sup>2</sup>]

### Rescript of the King of Denmark to the Magistrates of the City of Copenhagen and Other Maritime Cities of Denmark regarding the Conduct of His Subjects engaging in Trade and Navigation during the Present War,<sup>3</sup> February 22, 1793<sup>4</sup>

In order to safeguard our commerce and navigation during the war now being waged between different Powers, we have deemed it necessary to acquaint our subjects with the rules whose observation will be necessary if they desire to enjoy during the war the security which the neutrality of our flag guarantees in conformity with our treaties with foreign Powers, which we have ever observed most strictly.

<sup>1</sup>February 21, 1783, new style.

<sup>2</sup>*Annual Register*, 1782, pp. 315, *et seq.*; 1783, pp. 319, 322, 331, 339; Martens, *Recueil*, 1st ed., vol. 2, p. 520.

<sup>3</sup>France declared war upon Great Britain and the Netherlands on February 1, 1793. The latter Powers later joined the first coalition against France.

<sup>4</sup>Translation. *Ibid.*, 2d ed., vol. 5, p. 557. A similar rescript was issued on February 25, 1793, for the cities of Norway. *Ibid.*, p. 561n.

To that end it is now especially necessary that, during a war, the ships of the subjects of a neutral Power should be provided with sea passes and other documents of a definite form, and we therefore desire our first President, Burgomaster and Council of our royal residence city of Copenhagen, to order our subjects of this city to observe the following rules until further notice:

SECTION 1. Those of our subjects of this city who desire to send their ships to a foreign port in the North Sea or the Atlantic Ocean, or beyond, must, by observing the following prescriptions, address themselves to the magistrate in order to secure a certificate relative to the ownership of the ship, and forthwith request from our general national Board of Agriculture and Commerce the Latin pass which, if nothing of an untoward nature intervenes, shall be issued to them as soon as possible.

SEC. 2. To secure a ship's certificate in this city, those who apply for such certificate must prove that they are local residents, that they are the sole or chief owners of the ship, and make oath in person, or by means of their autograph signature, that the ship belongs solely to them, or that they own it in common with other of our subjects.

SEC. 3. Since, according to the generally accepted basic principles, neutral ships are not permitted to enter blockaded ports, or to have on board merchandise of a contraband nature belonging to one of the belligerent Powers or to their subjects, therefore, in order to avoid molestation of our flag in any way and to maintain its dignity, you shall earnestly direct our mariners to conduct themselves in accordance with these basic principles; and as a further means of security, you may set forth in the afore-mentioned certificate relative to the oath regarding the ownership of the ship, that after the said oath has been taken, the ship has on board no contraband destined for the belligerent Powers or for their subjects.

SEC. 4. In the term contraband of war are included only firearms and weapons of any other kind such as cannon, guns, mortars, etc., with regard to which the treaties should be consulted.

SEC. 5. In the term contraband of war are not included, etc. See the treaties.

SEC. 6. In view of the fact that in time of war, the rights of navigation and commerce of neutral nations as against the belligerent Powers are especially defined in agreements and treaties, and in view of the fact that the treaty of alliance and commerce with England of

1670 requires that in time of war, a document regarding the neutrality be kept on board; therefore, in order to be able in all cases to protect most effectively the rights of our subjects and to demand indemnification, if, contrary to our expectation, they should be disturbed in their licit commerce, we have ordered that, for the purpose of proving the neutral nature of the cargo, our subjects shall obtain the necessary certificates from the magistrates and consuls of the localities where they load, and we therefore direct you to prepare such certificates in conformity with the model which you shall receive from our general national Board of Agriculture and Commerce, and to deliver them, upon request, after they have been previously sworn to as to their contents.

SEC. 7. All ships of our subjects, whether built or purchased within our lands or abroad, must, if they request Latin passes, be provided with a bill of sale, or a bill of purchase, to prove the ownership of our subjects. Such a document must be certified by the authority of the locality, and the captain of the ship must have it on board for use in each case of need.

SEC. 8. In order to sail a ship of our subjects provided with the said passes, the captain must be our subject and have acquired civic rights; he must have on board his letter of citizenship. For further insurance that he will order nothing done contrary to these undertakings, the captain, before he leaves the port where he obtained the pass, must make oath to the effect that with his knowledge and will it is not purposed to misuse the pass or the certificate, which oath of the captain must accompany the request of the ship-owner for the pass; if however he can not do so, owing to the fact that the captain is absent, he must state it in his request, and upon his own responsibility direct the captain to take the oath before the authority or before the consul of the foreign locality where he obtained the pass.

SEC. 9. Besides the afore-mentioned documents, the ships must further have the following papers on board:

1. A list of the crew, attested to by the members thereof.
2. The charter-party and bill of lading in reference to the cargo.
3. Bill of tonnage.
4. Receipted bill of the tax office of the locality where the cargo is taken on board.

SEC. 10. Ordinance regarding stamped paper for incidental official documents, etc.

SEC. 11. Ordinance regarding the royal dues for passes and other dues, etc.

SEC. 12. Ordinance regarding the refunding of dues for passes, in case the pass has not been used, etc.

SEC. 13. Each pass is good only for one trip which is regarded as terminated when the ship returns from a foreign port to a port of our royal realms and lands. When the trip is terminated, the pass must be delivered to the authority of the locality which shall forward it to the general national Board of Agriculture and Commerce.

SEC. 14. The certificates regarding the ships and cargo shall be prepared in Latin, in accordance with a model approved by us, which you will obtain from the general national Board of Agriculture and Commerce.

You are to follow these presents and communicate the necessary information to those interested.

Given at our castle. Christiansburg, in our residence city of Copenhagen, February 11, 1793.<sup>1</sup>

CHRISTIAN R.

SCHIMMELMANN  
SEHESTAEDT  
PRAM

**Articles 4 and 5 of the Treaty of Amity and Commerce between  
Great Britain and Spain, May 25, 1793<sup>2</sup>**

**ARTICLE 4**

Their said Majesties engage reciprocally to shut their ports against French vessels; not to permit that there shall in any case be exported from their ports for France either warlike or naval stores, or wheat or other grains, salted meat or other provisions; and to take every other measure in their power to distress the trade of France, and reduce her by that means to just conditions of peace.

<sup>1</sup>February 22, 1793, new style.

<sup>2</sup>*Collection of State Papers*, vol. 1, p. 14.



## ARTICLE 5

Their said Majesties also engage, the present war being generally interesting to every civilized State, to unite all their efforts in order to prevent those Powers, which do not take part in the said war, from affording, in consequence of their neutrality, any protection, direct or indirect, on the seas or in the ports of France, to the commerce and property of the French.

**Convention between Denmark and Norway and Sweden for the common Defence of the Liberty and Safety of Danish and Swedish Commerce and Navigation, March 27, 1794<sup>1</sup>**

His Majesty the King of Denmark and Norway, and His Majesty the King of Sweden, having considered how much it imports the subjects of their realms to enjoy, in safety and tranquillity, the advantages attached to a perfect neutrality and founded on acknowledged treaties, impressed with a deep sense of their duties to their subjects, and unable to dissemble the inevitable embarrassments of their situation in a war which rages in the greater part of Europe, have agreed and do agree to unite their measures and their interests in this respect, and to give to their nations, after the example of their predecessors, all the protection which they have a right to expect from their paternal care; desiring, moreover, to draw closer the bonds of amity which so happily exist between them, have nominated to that effect: His Danish Majesty, his Minister of State and Foreign Affairs, the Sieur André Pierre Count Bernstorff, Knight of the Order of the Elephant, etc; and His Majesty the King of Sweden, the Sieur Eric Magnus Baron Stael de Holstein, Chamberlain to Her Majesty the Queen Dowager of Sweden, and Knight of the Order of the Sword, who, after having exchanged their full powers, have agreed on the following articles:

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 5, p. 606.

## ARTICLE 1

Their Majesties solemnly declare that they will maintain the most perfect neutrality in the course of the present war ; avoid, in so far as it depends upon them, whatever may embroil them with the Powers their friends and allies ; and continue to show them, as they have constantly done, in circumstances sometimes difficult, all the consideration, and even all the friendly deference, consistent with their own dignity.

## ARTICLE 2

They declare moreover, that they claim no advantage which is not clearly and unexceptionably founded on their respective treaties with the Powers at war.

## ARTICLE 3

They also engage reciprocally, and before all Europe, that they will not claim, in cases not specified in their treaties, any advantage which is not founded on the universal law of nations hitherto acknowledged and respected by all the Powers and all the sovereigns of Europe, and from which they can as little suppose that any of them will depart as they are incapable of departing from it themselves.

## ARTICLE 4

Founding the claim and the maintenance of their indisputable rights upon so just a basis, they will give to the innocent navigation of their subjects, which is entirely within the rule of, and conformable to subsisting treaties, without extending it to such as may depart from the rule, all the protection which it deserves against all those who, contrary to their expectation and their hopes, would disturb the legal exercise of sanctioned rights, the enjoyment of which cannot be denied to neutral and independent nations.

## ARTICLE 5

For attaining the proposed object, Their Majesties engage reciprocally to equip, as soon as the season will permit, each a squadron of eight ships of the line, with a proportionate number of frigates, and to provide them with all necessaries.

## ARTICLE 6

These squadrons shall unite or separate, as shall be judged best for the common interest, which shall be interpreted on both sides with the amity that so happily exists between the Powers.

## ARTICLE 7

No distinction whatsoever shall be made between the interests and the flags of the two nations, except such as different subsisting treaties with other nations may require. Moreover, in all cases of defense, convoy or others, without any exception the Danish ships shall defend the Swedish ships and flag, as if they were their own nation, and *vice versa*.

## ARTICLE 8

For the order of command, in all cases it is agreed to adopt the tenor of Articles 6 and 7 in the Convention of July 12, 1756.<sup>1</sup>

## ARTICLE 9

The German States, both of Denmark and Sweden, are reciprocally and entirely excepted from this convention.

## ARTICLE 10

The Baltic being always to be considered as a sea closed and inaccessible to the armed ships of distant Powers at war, is declared so anew by the contracting Parties, who are resolved to maintain in it the most perfect tranquillity.

## ARTICLE 11

Their Majesties engage to make a joint communication of this convention to all the Powers at war, adding the most solemn assurances of their sincere desire to preserve with them the most perfect harmony, and to cement, rather than wound it, by this measure, which tends only to secure rights maintained and asserted by those Powers themselves, in all cases where they were neutral and at peace, without Denmark and Sweden having ever dreamed of interrupting them.

<sup>1</sup>Wenck, vol. 3, p. 148.

## ARTICLE 12

But if the unfortunate case should arise that any Power, in contempt of treaties and the universal law of nations, will not respect the basis of society and the general happiness, and shall molest the innocent navigation of the subjects of Their Danish and Swedish Majesties, then, after having exhausted all possible means of conciliation, and made the most pressing joint remonstrances, in order to obtain the satisfaction and indemnity due to them, they will make use of reprisals four months, at the latest, after the refusal of their claim, wherever it shall be thought proper, the Baltic always excepted; and they will answer entirely the one for the other, and support one another equally, if either nation shall be attacked or injured on account of this convention.

## ARTICLE 13

This convention shall subsist in its whole tenor during the present war, unless it should be agreed upon, for the common interest, to make any useful or necessary change in or addition to it.

## ARTICLE 14

The ratification shall take place fifteen days after this convention shall have been signed and exchanged. In testimony of which, we, the undersigned, by virtue of our full powers, have signed the present convention, and affixed to it the seal of our arms.

Done at Copenhagen, March 27, 1794.

A. P. v. BERNSTORFF

ERIC MAGNUS STAEL DE HOLSTEIN

**Articles 17 and 18 of the Treaty of Amity, Commerce and Navigation between Great Britain and the United States of America, November 19, 1794<sup>1</sup>**

## ARTICLE 17

It is agreed that in all cases where vessels shall be captured or detained on just suspicion of having on board enemy's property, or of

<sup>1</sup>Malloy, vol. 1, p. 601.

carrying to the enemy any of the articles which are contraband of war, the said vessels shall be brought to the nearest or most convenient port; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy shall be made prize, and the vessel shall be at liberty to proceed with the remainder without any impediment. And it is agreed that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes so brought in for adjudication, and in the payment or recovery of any indemnification, adjudged or agreed to be paid to the masters or owners of such ships.

#### ARTICLE 18

In order to regulate what is in future to be esteemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket-rests, bandoliers, gun-powder, match, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war, as also timber for ship-building, tar or rozin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and all the above articles are hereby declared to be just objects of confiscation whenever they are attempted to be carried to an enemy.

And whereas the difficulty of agreeing on the precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed that whenever any such articles so becoming contraband, according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or, in their default, the Government under whose authority they act, shall pay to the masters or owners of such vessels the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either

besieged, blockaded or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after notice she shall again attempt to enter, but she shall be permitted to go to any other port or place she may think proper; nor shall any vessel or goods of either party that may have entered into such port or place before the same was besieged, blockaded, or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the owners or proprietors there.

**Articles 10, 11 and 12 of the Treaty of Navigation and Commerce  
between Great Britain and Russia, February 21, 1797<sup>1</sup>**

**ARTICLE 10**

It shall be permitted to the high contracting Parties to go, come, and trade freely in the States with which the one or the other of those parties shall be, in present or in future, at war, provided that they do not carry ammunition to the enemy: with the exception, nevertheless, of places actually blockaded or besieged, whether by sea or land; but at all other times, and with the exception of warlike ammunition, the subjects aforesaid may transport into those places every other sort of merchandise, as well as passengers, without the smallest hindrance. With respect to the searching of merchant ships, ships of war and privateers shall conduct themselves as favourably as the course of the war then existing may possibly permit it towards the most friendly Powers which shall remain neuter, observing, as much as possible, the acknowledged principles and rules of the law of nations.

**ARTICLE 11**

All cannons, mortars, firearms, pistols, bombs, grenades, balls, bullets, muskets, flints, matches, powder, saltpetre, sulphur, cutlasses, pikes, swords, belts, cartouch-boxes, saddles and bridles, beyond the quantity which may be necessary for the use of the ship, or beyond that which each man serving on board the vessel, or passenger, shall

<sup>1</sup>February 10, 1797, old style. *Collection of State Papers*, vol. 6, p. x.

have, shall be esteemed warlike provisions or ammunition; and if any are found, they shall be confiscated, according to the laws, as contraband or prohibited effects; but neither the ships, passengers, nor the other merchandise found at the same time, shall be detained or prevented from continuing their voyage.

#### ARTICLE 12

If, which God forbid, peace should be broken between the two high contracting Parties, neither persons, ships, nor merchandise, shall be detained or confiscated; but the term of a year at least shall be granted, for the purpose of selling, disposing of, or carrying away their effects, and withdrawing themselves wherever they shall please, which is to be understood equally respecting all those who shall be in the sea and land service; and they shall be permitted, previous to or at their departure, to consign the effects of which they shall not have disposed, as well as the debts to which they may have a claim, to such person as they shall judge proper, to be disposed of according to their will and profit; which debts the debtor shall equally be obliged to pay as if the rupture had not taken place.

#### The Case of The Maria<sup>1</sup>

THE MARIA, Paulsen, master<sup>2</sup>

June 11, 1799

*A vessel sailing under convoy of an armed ship, for the purpose of resisting visitation and search, condemned*

This was the leading case of a fleet of Swedish merchantmen, carrying pitch, tar, hemp, deals and iron, to several ports of France, Portugal, and the Mediterranean, and taken, January, 1798, sailing under convoy of a ship of war, and proceeded against for resistance of visitation and search by British cruisers.

<sup>1</sup>C. Robinson, 340.

<sup>2</sup>Affirmed on appeal, July 2d, 1802.

In December, 1797, this case coming on to be argued on the original evidence, the court directed farther information to be given by both parties, respecting the precise acts that took place at the time of capture, the instructions under which the convoyed ships were sailing, and also the instructions to the Swedish frigate.

On a subsequent day this information being produced, it was again argued at much length.

On the part of the captors, the *King's Advocate* and *Arnold*, in substance contended, if the case of this ship and cargo were to be considered singly, and separated from the principal question of convoy, there are many circumstances attending it of a very noxious aspect. It was going on an asserted destination to Genoa, at a time when that port was become almost a hostile port, by its subserviency to all the purposes of the French marine, whilst our ships and cruisers were absolutely excluded. It was going under the certificate of the French consul, in compliance with the unjust decree of the French Government,<sup>1</sup> and the articles of which the cargo consisted, were articles of a contraband nature. It is true they are such articles as the Swedes are now permitted to carry in time of war, under certain circumstances, but only under a strict observance of good faith, a conduct perfectly neutral, and in all cases subject to a right of preemption on the part of a belligerent nation. And farther, the truth of this asserted destination to Genoa is exposed to great suspicion from the discretionary power with which the master was intrusted, of going elsewhere.

These are circumstances unfavorable in themselves; but they assume a more distinct hostile character from the circumstance of being taken sailing under the protection of an armed force, and associated for the purpose of resisting visitation and search from the cruisers of this country. The act of resistance to the lawful rights of search, is the ground on which it is principally contended that this case is subject to con-

<sup>1</sup>Decree, 18th January, 1797. "L'état des navires en ce qui concerne leur qualité de neutre ou d'ennemi sera déterminé par leur cargaison; en conséquence tout bâtiment trouvé en mer, chargé en tout ou en partie de marchandises provenant d'Angleterre, ou de ses possessions, sera déclaré de bonne prise, quelque soit le propriétaire de ces denrées ou marchandises." See Atcheson's *Report of a Case in King's Bench*, Appendix, p. 155, where the reader will see the late regulations of the French Government in matters of prize.

In consequence of this decree, all neutrals were required to take a certificate from the French consuls that their goods were not of British produce or manufacture.



fication. For although this fact may receive color and complexion of a more hostile nature from other circumstances, it is alone sufficient to incur the penalty of confiscation. The right of visitation and search in time of war, even in the most innoxious cases, is an established right of belligerent Powers, acknowledged and referred to in the treaties of the States of Europe. It is admitted by all speculative writers on the law of nations. Bynkershoek expressly admits it in these words: "Velim animadvertas, eatenus utique licitum esse amicam navem sistere, ut non ex fallaci forte aplustri, sed ex ipsis instrumentis in navi repertis constet, navem amicam esse."<sup>1</sup> And Vattel<sup>2</sup> acknowledges the penalty attending the contravention of this right by neutral ships to be confiscation. Even in cases where it is possible this right may be wrongfully exercised by cruisers, resistance is not the legal remedy, as there is a regular and effectual remedy, provided by all the maritime codes of Europe, in the responsibility which cruisers lie under to make compensation for any injurious exercise of their right, in costs and damages. These principles being admitted, as they were indeed admitted in the former hearing, it becomes a question of fact, whether there was that hostile resistance that will subject the parties to the penalty of confiscation. On this point it is submitted that the instructions of the Swedish Government to the commander of this convoy<sup>3</sup> lay upon him as a positive injunction to prevent search by all possible means, and "that violence must be opposed by violence." These are carried into execution by the sailing orders,<sup>4</sup> which forbade

<sup>1</sup>Lib. i, ch. 14.

<sup>2</sup>Lib. iii. § 114.

<sup>3</sup>*Instructions to the Commander:*

"In case the Lieutenant Colonel should meet with any ships of war of other nations, one or more of any fleet whatever, then the Lieutenant Colonel is to treat them with all possible friendship, and not give any occasion of enmity; but if you meet with any foreign armed vessel, which on speaking should be desirous of having still farther assurance that your frigate belongs to the King of Sweden, then the Lieutenant Colonel is, by the Swedish flag and salute, to make them know that it is so; or if they would make any search among the merchant ships which are under your convoy, which ought to be endeavored to be prevented as much as possible, then the Lieutenant Colonel is, in case such thing should be insisted on, and that remonstrances could not be amicably made, and that notwithstanding your amicable portment, the merchant ships shall be nevertheless violently attacked, then violence must be opposed against violence."

<sup>4</sup>*Sailing Instructions to the Merchantmen:*

"All merchantmen ships, during the time they are under convoy of His Majesty's ships, frigates, or sloops, are forbidden to suffer the boats of any foreign nation to board them for the sake of visitation or searching, but in case such boats show an intention to come alongside, the merchant ships are to sheer off from them."

their merchantmen "to submit to search; but if any boat attempted to come alongside, to sheer off from them." It is still farther carried into effect by all that passed at the time; and more especially by the act of forcibly removing an officer who had taken possession of one ship, and carrying him on board the frigate. And it is again confirmed by the regret which the commander expressed that he had not fired, protesting, "that if the ships had not been seized at night he would have resisted."

For the claimants, *Laurence* and *Swabey*. The original importance of this question, great as it undoubtedly was, has been very materially increased by the manner in which it has been brought on.

The claimants have reason to complain that every thing has been brought forward *ex parte* by the captors. The instructions of the Swedish commander are produced in an unauthenticated form, and introduced only under a note from the under Secretary of State. It is not proved that they were the whole of the instructions. It must, therefore, rest with the court to say how far they are sufficiently authenticated. The instructions under which the English commander acted have been altogether withheld. On the part of the claimant's evidence, the officer of the Swedish frigate has been sent away to render an account to his own Government, and by that means the parties are deprived of the benefit of his evidence. Under these disadvantages, however, it is still to be contended that there has been no act of hostility committed against this country. There is no disposition to assert a right on the part of neutral merchant ships to resist visitation and search by the cruisers of a belligerent State. It is not to be argued, undoubtedly, that neutrals have a right in all cases to resist search. If such a speculative doctrine is asserted by any States, it is for them to maintain it. In the present case we stand upon no such position, but upon something which appears to have been overlooked—a treaty on this important question of search between the two countries. Treaty between England and Sweden, 1661, Article 12. After an express treaty, it is not allowable to presume any thing contrary to that compact on the part of the other State, nor to argue on general principles to defeat the force of the obligation arising from it on our part. Search is by this treaty to be exercised only on a refusal to produce the certificates or ship's papers; in no other case is it justifiable. And although a strong suspicion might still justify a seizure

under the responsibility of costs and damages; still, in the manner of making this seizure (and the whole of this case rests on the course of the proceedings), if we did not proceed in the manner in which we ought to have done, there is an end of our right under the compact; and we are not at liberty to impute any thing that ensued in consequence of our own irregularity, as an act of aggression against the other party. These are the principles on which it is intended to support the present claim. Originally, and in its natural appearance, this convoy is to be considered as a neutral convoy; and therefore it lies on the captor to show by some act that there was a departure from neutrality; for it cannot be pretended that a mere intention (if it were proved) would be sufficient, under any system of law, to incur the penalty of an actual offence. It seemed to be admitted by the court on a former day, that there was just distinction to be made between two cases of convoy—between a convoy of an enemy's force and a neutral convoy. The former would stamp a primary character of hostility on all ships sailing under its protection; and it would rest with the parties to take themselves out of the presumption raised against them. But that it would be, even in that case, nothing more than a presumption, is determined by a late case before the Lords,—*The Sampson Barney*, an asserted American armed ship, sailing with French cruisers at the time they engaged some English ships, and communicating with the French ships by signal for battle. In that case, although there had been a condemnation below, the Lords sent it to farther proof, to ascertain whether there had been an actual resistance.

[COURT. I do not admit the authority of that case to the extent you push it. That question is still reserved, although the Lords might wish to know as much of the facts as possible.]

In the other case of a neutral convoy, there is no presumption of a hostile character arising from it, and therefore it remains with the captors to show that there was an actual resistance in this case. Coming then to the question of fact, with the provisions of the treaty kept constantly in view, and remembering that when there is a treaty regulating the mode and manner of proceeding, both parties are bound to proceed accordingly, and that any presumptions which are raised, should proceed upon the words of that compact, and not depart from it, where will the captors find any actual resistance in the conduct of these parties?

The instructions are relied upon, but they are general, and do not any more than the other circumstances preceding or attending this transaction, point, in any degree, to a resistance towards this country. It is notorious, that at the time of passing the French decree against English merchandise, which is deservedly reprobated on all sides, the Swedish merchants did apply for a protection of this kind; and therefore the probability is at least as great, that it was intended to protect them against French cruisers as against this country. The directions are, "to observe an amicable deportment; but that violence must be opposed by violence"; expressions on which it will not be fair to put any other construction than what is compatible with the provisions of the treaty, or to suppose that they meant more than that the stipulations of the treaty were to be faithfully maintained.

What passed then at the time? Was there any thing like actual personal resistance? Certainly not. From the evidence of M'Dougal, it appears that there was nothing like an hostile appearance shown towards the *Wolverine*, till after four days had passed in discussion between the commanders. The Swedish commander had a right to expect to have been first addressed; under the treaty the certificates should have been demanded. If not produced, the ships might have been searched; and, on strong suspicion, seizure might have been made. But the question is, have the captors proceeded in this way? If, in opposition to this they have at once superseded all forms and said, we seize and detain, the matter assumes a different aspect, and we have no right to exact a rigid observance of form on the other side. On descrying the convoy, what was done on the part of the captors? It was on that side that the first appearance of menace was shown. The English ships immediately beat to quarters; the destination is inquired of, and an answer given; but there is no demand for papers; no attempt to search. Captain Lawford states, that, as a measure of prudence, he sent immediately to the Admiralty for particular instruction, and received orders to detain the convoy. On the first interview, the Swedish commander immediately communicated his instructions with the greatest readiness; from which it appears, that, in his opinion, they contained nothing hostile to this country. The removal of a petty officer, that has been relied on as act of resistance, was more a matter of form than actual opposition, used as a sort of protest against the irregular proceeding of the captors, and did not for a moment retard the actual delivery of possession on the part of

the merchantmen. The subsequent acts show still more strongly how little the acts of the captors were directed by the treaty; and how little they themselves thought that any penalty of prize had accrued to them by this circumstance of convoy. Instead of the usual demand for the ship's papers in the first instance, they were not demanded till August. They were afterwards returned to one vessel, and an offer was made to all those bound to neutral ports to depart; but they refusing to go without some compensation for detention, proceedings were then instituted for the first time, on the principle of convoy—a principle which cannot now come into discussion, owing to the irregular proceedings of the captors; and which, besides, cannot fairly be enforced against the merchantmen, by this court, whilst the Government has permitted the frigate to depart, and has declined to consider the act of the commander as an act of hostility against the State. On these grounds, and adverting to former practice, in which some instances occur of restitution of ships taken under convoy, whilst no precedents of condemnation on this principle are adduced, it is submitted that the claimants have done nothing to forfeit their neutral character, and are therefore entitled to restitution.

#### JUDGMENT.

SIR W. SCOTT. This ship was taken in the British channel, in company with several other Swedish vessels sailing under convoy of a Swedish frigate, having cargoes of naval stores and other produce of Sweden on board, by a British squadron under the command of Commodore Lawford.

The facts attending the capture did not sufficiently appear to the court upon the original evidence; it therefore directed further information to be supplied, and by both parties.

The additional information now brought in consists of several attestations made on the part of the captors, and of a copy of the instructions under which the Swedish frigate sailed, transmitted to the Foreign Department. On the part of the Swedes some attestations King's proctor from the office of the British Secretary of State for the and certificates have been introduced, but all of them applying to collateral matter, none relating immediately to the facts of the capture. On this evidence the court has to determine this most important question; for its importance is very sensibly felt by the court. I have, therefore, taken some time to weigh the matter maturely; I should

regret much, if that delay has produced any private inconvenience ; but I am not conscious (attending to the numerous other weighty causes that daily press upon the attention of the court), that I have interposed more time in forming my judgment than was fairly due to the importance of the question, and to the magnitude of the interests involved in it.

In forming that judgment, I trust that it has not escaped my anxious recollection for one moment, what it is that the duty of my station calls for from me ; namely, to consider myself as stationed here, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out, without distinction, to independent States, some happening to be neutral and some to be belligerent. The seat of judicial authority is, indeed, locally here, in the belligerent country, according to the known law and practice of nations ; but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm ; to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden, as a neutral country, which he would not admit to belong to Great Britain in the same character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the universal law upon the question ; a question regarding one of the most important rights of belligerent nations relatively to neutrals.

The only special consideration which I shall notice in favor of Great Britain (and which I am entirely desirous of allowing to Sweden in the same or similar circumstances) is, that the nature of the present war does give this country the rights of war, relatively to neutral States, in as large a measure as they have been regularly and legally exercised, at any period of modern and civilized times. Whether I estimate the nature of the war justly, I leave to the judgment of Europe, when I declare that I consider this as a war in which neutral States themselves have an interest much more direct and substantial than they have in the ordinary, limited, and private quarrels (if I may so call them) of Great Britain and its great public enemy. That I have a right to advert to such considerations, provided it be done with sobriety and truth, cannot, I think, reasonably be doubted ; and if authority is required, I have authority—and not the less weighty in this

question for being Swedish authority—I mean the opinion of that distinguished person, one of the most distinguished which that country (fertile as it has been of eminent men) has ever produced; I mean Baron Puffendorff.<sup>1</sup> The passage to which I allude is to be found in a note of Barbeyrac's, on his larger work, L. viii. c. 6, s. 8. Puffendorff had been consulted in the beginning of the present century, when England and other States were engaged in the confederacy against Louis XIV, by a lawyer, upon the continent, Groningius, who was desirous of supporting the claims of neutral commerce, in a treatise which he was then projecting. Puffendorff concludes his answer to him in these words:

I am not surprised that the northern Powers should consult the general interest of all Europe, without regard to the complaints of some greedy merchants, who care not how things go, provided they can but satisfy their thirst of gain. These princes wisely judge that it would not become them to take precipitate measures, whilst other nations are combining their whole force to reduce within bounds an insolent and exorbitant power which threatens Europe with slavery, and the Protestant religion with destruction. This being the interest of the northern Crowns themselves, it is neither just nor necessary that, for the present advantage, they should interrupt so salutary a design, especially as they are at no expense in the affair, and run no hazard.

In the opinion, then, of this wise and virtuous Swede, the nature and purpose of a war was not entirely to be omitted in the consideration of the warrantable exercise of its rights, relatively to neutral States. His words are memorable. I do not overrate their importance, when I pronounce them to be well entitled to the attention of his country.

It might likewise be improper for me to pass entirely without notice, as another preliminary observation (though without meaning to lay any particular stress upon it), that the transaction in question took place in the British channel, close upon the British coast, a station over which the Crown of England has, from pretty remote antiquity, always asserted something of that special jurisdiction which the sovereigns of other countries have claimed and exercised over certain parts of the seas adjoining to their coasts.

<sup>1</sup>Puffendorff was not actually born in Sweden, but is usually claimed and allowed as a writer of that country, from his employment in it under the King of Sweden. The great work on which his fame is principally built, was given to the world during his residence in that country.

In considering the case, I think it will be advisable for me, first, to state the facts as they appear in the evidence; secondly, to lay down the principles of law which apply generally to such a state of facts; thirdly, to examine whether any special circumstances attended the transaction in any part of it, which ought in any manner or degree to affect the application of these principles.

The facts of the capture are to be learnt only from the captors, for, as I have observed, the claimants have been entirely silent about them, and that silence gives the strongest confirmation to the truth of the accounts delivered by the captors.

The attestation of Captain Lawford introduces and verifies his log-book, in which it is stated, that after the meeting of the fleets he sent an officer on board the frigate to inquire about the cargoes and destination of the merchantmen, and was answered, "that they were Swedes bound to different ports in the Mediterranean, laden with hemp, iron, pitch, and tar." Upon doubts which Captain Lawford entertained respecting the conduct he should hold in a situation of some delicacy, he despatched immediately a messenger to the Admiralty, keeping the convoy in his view; and having received orders from the Admiralty by the return of his messenger to detain these merchant ships and carry them into the nearest English port, he sent Sir Charles Lindsay, and Captain Raper to communicate them in the civilest terms to the Swedish commodore, who showed his instructions to repel force by force if any attempt was made to board the convoy, and declared that he should defend them to the last. The crew of the Swedish frigate were immediately at quarters, matches lighted, and every preparation made for an obstinate resistance; and the signal was made on board the British squadron to prepare for battle. In the night, possession was taken of most of the vessels, the Swedish frigate making many movements, which were narrowly watched by *The Romney*, keeping close under his lee, lower deck guns run out, and every man at his quarters. In the morning the Swedish frigate hoisted out an armed boat, and sent on board one of the vessels which had been taken possession of, and took out by force the British officer who had been left on board, and carried him on board the frigate, where he was detained. The Swedish commander sent an officer of his own on board, Captain Lawford, to complain that he had taken advantage of the night to get possession of his convoy, which was unobserved by him, or he should assuredly have defended them to the last. Upon further conference



and representation of the impracticability of resistance to such a superior force, he at length agreed to go into Margate Roads, and returned the British officer who had been taken out and detained on board the frigate. After the arrival in Margate Roads he lamented that he had not exchanged broadsides; said that he did not consider his convoy as detained, and should resist any further attempt to take possession of them.

Captain Raper states, that on going on board the Swedish frigate, he found all the men at their quarters, and the ship clear for action; that the commodore showed his orders and expressed his firm determination to carry them into execution. Captain Lawford sent a boat with an officer on board several of the convoy, to desire they would follow into Margate Roads; their answer was, they would obey no one but their own commodore.

Lieutenant M'Dougal describes in like terms the menacing appearance and motions of the Swedish frigate. He was sent to take possession of vessels which would not bring-to without firing at them. On his going on board one of them, the master declared that he had orders from his commodore not to give up the possession of her to any person whatever, and repeatedly drove away by force the British mariner, who, by his order, took possession of the helm.

Mr. Cockraft is another witness to the same effect, and Mr. Candish, the officer who was taken by force out of the Swedish merchantman. Expressions of strong reproach against the proceedings of the English were addressed to him, and the commodore protested, that if he had not been surprised he would have defended his convoy to the last.

What then do these attestations (uncontradicted attestations) prove? To my apprehension they prove most clearly these facts: that a large number of vessels, connected all together with each other, and with a frigate which convoyed them, being bound to different ports in the Mediterranean, some declared to be enemy's ports and others not, with cargoes consisting, amongst other things, of naval stores, were met with, close upon the British coast, by His Britannic Majesty's cruisers; that a continued resistance was given by the frigate to the act of boarding any of these vessels by the British cruisers, and that extreme violence was threatened in order to prevent it; and that the violence was prevented from proceeding to extremities only by the superior British force which overawed it; that the act being effected in the night, by the prudence of the British commander, the

purpose of hostile resistance, so far from being disavowed, was maintained to the last, and complaint made that it had been eluded by a stratagem of the night; that a forcible recapture of one vessel took place, and a forcible capture and detention of one British officer who was on board her, and who, as I understand the evidence, was not released till the superiority of the British force had awed this Swedish frigate into something of a stipulated submission.

So far go the general facts. But all this, it is said, might be the ignorance or perverseness of the Swedish officer of the frigate—the folly or the fault of the individual alone. This suggestion is contradicted by Mr. Raper's log-book, which proves that the merchantmen refused to admit the British officers on board, and declared that they would obey nobody but their own commodore; a fact to which Mr. M'Dougal likewise bears testimony. It is contradicted still more forcibly by the two sets of instructions, those belonging to the frigate and those belonging to the merchant vessels. The latter have been brought into court by themselves, and of the authenticity of the former there is no reasonable doubt; for they are transmitted to me upon the faith of one of the great public offices of the British Government, and no person disavows them, and indeed nobody can disavow them, because they were produced by the Swedish captain, who made no secret whatever of their contents. Something of a complaint has been indulged, that the orders from the British Admiralty have not been produced; a singular complaint, considering that they were never called for by the claimants, and they were not ordered by the court; because, if the act of the captors was illegal, the orders of the Admiralty would not justify it, and the want of orders would not vitiate, if the act was legal. No mystery, however, was made about these, for the communication of orders and instructions was mutual and unreserved. It is said that the instructions to the frigate are intended only against cruisers of Tripoli, and an affidavit has been brought in to show that that Government had begun hostilities against the Swedes. The language, however, of these instructions is as universal as language possibly can be; it is pointed against the "fleets of any nation whatever." It is, however, said that this was merely to avoid giving offence to the Tripoline Government. But is the Tripoline Government the only Government whose delicacy is to be consulted in such matters? Are terms to be used alarming to every other State, merely to save appearances with a Government which, they allege in the affidavit referred

to, had already engaged in unjust hostility against them? There is, however, no necessity for me to notice this suggestion very particularly, and for this plain reason, that it is merely a suggestion, neither proved nor attempted to be proved in any manner whatever; and the *res gesta* completely proves the fact to be otherwise, because it is clear that if it had been so, the commander of the frigate must have had most explicit instructions to that effect. They could never have put such general instructions on board, meaning that they should be limited in their application to one particular State, without accompanying them with an explanation either verbal or written, which it was impossible for him to misunderstand. Such explanation was the master-key which they must have provided for his private use, whereas nothing can be more certain than that he had been left without any such restrictive instructions; he, therefore, acts as any other man would do, upon the natural sense and meaning of the only instructions he had received. On this part of the case, therefore, the question is. What is it that these general instructions purport?

The terms of the instructions are these—they are incapable of being misunderstood: "In case the commander should meet with any ships of war of other nations, one or more of any fleet whatever, then the commander is to treat them with all possible friendship, and not to give any occasion of enmity; but if you meet with a foreign armed vessel which should be desirous of having further assurance that your frigate belongs to the King of Sweden, then the commander is by the Swedish flag and salute to make known that it is so; or if they would make any search amongst the merchant vessels under your convoy, which ought to be endeavored to be prevented as much as possible, then the commander is, in case such thing should be insisted upon and that remonstrances could not be amicably made, and that notwithstanding your amicable comportment the merchant ships should nevertheless be violently attacked, then violence must be opposed against violence." Removing mere civility of expression, what is the real import of these instructions? Neither more nor less than this, according to my apprehension—"if you meet with the cruisers of the belligerent States, and they express an intention of visiting and searching the merchant ships, you are to talk them out of their purpose if you can; and if you can't, you are to fight them out of it." That is the plain English, and, I presume, the plain Swedish of the matter.

Were these instructions confined to the frigate, or were they ac-

cepted and acted upon by the merchantmen? That they were acted upon is already shown in the affidavits which I have stated; that they were deliberately accepted, appears from their own instructions, which exactly tally with them. These instructions declare in express terms, "that all merchant ships, during the time they are under convoy of His Majesty's ships, are earnestly forbidden to suffer the boats of any foreign nation to board them for the sake of visitation or searching; but in case such boats show an intention of coming alongside, the merchant ships are to sheer from them." It appears from the attestation that the obedience of these merchantmen outran the letter of their instructions.

Whatever then was done upon this occasion was not done by the unadvised rashness of one individual, but it was an instructed and premeditated act—an act common to all the parties concerned in it; and of which every part belongs to all; and for which all the parties, being associated with one common intent, are legally and equitably answerable.

This being the actual state of the fact, it is proper for me to examine, secondly, what is their legal state, or, in other words, to what considerations they are justly subject according to the law of nations; for which purpose I state a few principles of that system of law which I take to be incontrovertible.

First, That the right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation. I say, be the ships, the cargoes, and the destinations what they may, because, till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists. This right is so clear in principle, that no man can deny it who admits the legality of maritime capture; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can legally be captured, it is impossible to capture. Even those who contend for the inadmissible rule, that free ships make free goods, must admit the exercise of this right at least for the purpose of ascertaining whether the ships are free ships or not. The right is equally clear in practice; for practice is uniform and universal upon the subject. The many European treaties which refer to this

right, refer to it as preexisting, and merely regulate the exercise of it. All writers upon the law of nations unanimously acknowledge it, without the exception even of Hubner himself, the great champion of neutral privileges. In short, no man in the least degree conversant in subjects of this kind has ever, that I know of, breathed a doubt upon it. The right must unquestionably be exercised with as little of personal harshness and of vexation in the mode as possible; but soften it as much as you can, it is still a right of force, though of lawful force—something in the nature of civil process, where force is employed, but a lawful force, which cannot lawfully be resisted. For it is a wild conceit that wherever force is used, it may be forcibly resisted; a lawful force cannot lawfully be resisted. The only case where it can be so in matters of this nature, is in the state of war and conflict between two countries where one party has a perfect right to attack by force, and the other has an equally perfect right to repel by force. But in the relative situation of two countries at peace with each other, no such conflicting rights can possibly coexist.

Secondly, That the authority of the sovereign of the neutral country being interposed in any manner of mere force cannot legally vary the rights of a lawfully commissioned belligerent cruiser. I say legally, because what may be given, or be fit to be given, in the administration of this species of law, to considerations of comity or of national policy, are views of the matter which, sitting in this court, I have no right to entertain. All that I assert is, that legally it cannot be maintained, that if a Swedish commissioned cruiser, during the wars of his own country, has a right by the law of nations to visit and examine neutral ships, the King of England, being neutral to Sweden, is authorized by that law to obstruct the exercise of that right with respect to the merchant ships of his country. I add this, that I cannot but think that if he obstructed it by force, it would very much resemble (with all due reverence be it spoken) an opposition of illegal violence to legal right. Two sovereigns may unquestionably agree, if they think fit (as in some late instances they have agreed<sup>1</sup>), by special covenant, that the presence of one of their armed ships along with their merchant ships shall be mutually understood to imply that nothing is to be found in that convoy of merchant ships inconsistent with amity or neutrality; and if they consent to accept this pledge, no third party has a right to quarrel with it any more than with any other

<sup>1</sup>It is made an article of treaty between America and Holland, an. 1782, Article 10, Martens, *Recueil*, 1st ed., vol. 2, p. 255.

pledge which they may agree mutually to accept. But surely no sovereign can legally compel the acceptance of such a security by mere force. The only security known to the law of nations upon this subject, independent of all special covenant, is the right of personal visitation and search, to be exercised by those who have the interest in making it. I am not ignorant, that amongst the loose doctrines which modern fancy, under the various denominations of philosophy and philanthropy, and I know not what, have thrown upon the world, it has been within these few years advanced, or rather insinuated, that it might possibly be well if such a security were accepted. Upon such unauthorized speculations it is not necessary for me to descant. The law and practice of nations (I include partially the practice of Sweden when it happens to be belligerent) give them no sort of countenance; and until that law and practice are new-modelled in such a way as may surrender the known and ancient rights of some nations to the present convenience of other nations (which nations may perhaps remember to forget them, when they happen to be themselves belligerent), no reverence is due to them; they are the elements of that system which, if it is consistent, has for its real purpose an entire abolition of capture in war—that is, in other words, to change the nature of hostility, as it has ever existed amongst mankind, and to introduce a state of things not yet seen in the world, that of a military war and a commercial peace. If it were fit that such a state should be introduced, it is at least necessary that it should be introduced in an avowed and intelligible manner, and not in a way which, professing gravely to adhere to that system which has for centuries prevailed among civilized States, and urging at the same time a pretension utterly inconsistent with all its known principles, delivers over the whole matter at once to eternal controversy and conflict, at the expense of the constant hazard of the harmony of States, and of the lives and safeties of innocent individuals.

Thirdly, That the penalty for the violent contravention of this right is the confiscation of the property so withheld from visitation and search. For the proof of this I need only refer to Vattel, one of the most correct and certainly not the least indulgent of modern professors of public law. In Book III. c. vii. § 114, he expresses himself thus: “On ne peut empêcher le transport des effets de contrebande, si l’on ne visite pas les vaisseaux neutres que l’on rencontre en mer. On est donc en droit de les visiter. Quelques nations puissantes ont refusé

en différents temps de se soumettre à cette visite. Aujourd'hui un vaisseau neutre qui refuseroit de souffrir la visite, se feroit condamner par cela seul, comme étant de bonne prise." Vattel is here to be considered not as a lawyer merely delivering an opinion, but as a witness asserting the fact—the fact that such is the existing practice of modern Europe. And to be sure the only marvel in the case is, that he should mention it as a law merely modern, when it is remembered that it is a principle, not only of the civil law (on which great part of the law of nations is founded), but of the private jurisprudence of most countries in Europe, that a contumacious refusal to submit to fair inquiry infers all the penalties of convicted guilt. Conformably to this principle we find in the celebrated French ordinance of 1861, now in force, Article 12, "That every vessel shall be good prize in case of resistance and combat." And Valin, in his smaller *Commentary*, p. 81, says expressly, that although the expression is in the conjunctive, yet that the resistance alone is sufficient.<sup>1</sup> He refers to the Spanish ordinance, 1718, evidently copied from it, in which it is expressed in the disjunctive, "in case of resistance or combat." And recent instances are at hand and within view, in which it appears that Spain continues to act upon this principle. The first time in which it occurs to my notice on the inquiries I have been able to make in the institutes of our own country respecting matters of this nature, excepting what occurs in the Black Book of the Admiralty.<sup>2</sup>

<sup>1</sup>In some of the treaties of France this article is expressly inserted in the disjunctive. Treaty between France and the Duchy of Mecklenburg, Article 18, an. 1779. Martens, *Recueil*, 1st ed., vol. 2, p. 40; also between France and Hamburg, an. 1769.

<sup>2</sup>"B. 7. Item se aucune nef ou vessel de la ditte flotte a congie et pouvoir de l'admiral de passer hors de la flotte entour aucun message ou autre besongne, s'ilz encontrent ou trouvent aucuns vesseaulx estranges sur la mer ou en ports des ennemys, adonques ceulx de nostre flotte doivent demander des maistres et gouverneurs de telz vesseaulx estrangers dont ilz sont et eulx bien examiner de leur charge ensemblement avecques leurs muniments et endentures, et s'il est trouve aucune chose de suspicion en telz vesseaulx que les biens sont aux ennemys, qui sont trouvez dedens les dits vesseaulx avec leurs maistres et gouverneurs ensemblement avecques les biens dedens icelle estants souvement seront amenees devant l'admiral, et illecques s'il est trouve qu'ilz sont loyaulx marchants et amys sans suspicion de colerer, les biens seront a eulx redelivrees sans eulx rien dommager, autrement seront pris avec leurs biens et raensonnez comme la loy de mer veult et demande.

"B. 8. Se aucunes de noz neufs ou vesseaulx encontrent sur la mer ou en ports aucuns autres vesseaulx, qui facent rebelletees ou defense encontre ceulx de noz neufs ou vesseaulx, adonques bien lise a noz gents, les autres comme ennemys assaillir et part forte mayn les prendre et amener entièrement, comme ilz les ont gaignez, devant l'admiral sans eulx piller ou endommager, illecques de prendre ce que loy et coustume de mer veult et demande, etc."

is in the Order of Council, 1664, Article 12,<sup>1</sup> which direct, "That when any ship, met withal by the royal navy or other ship commissioned, shall fight or make resistance, the said ship and goods shall be adjudged lawful prize." A similar article occurs in the proclamation of 1672. I am aware, that in those orders and proclamations are to be found some articles not very consistent with the law of nations as understood

<sup>1</sup>During the struggle for naval superiority, which took place between the maritime States of Europe, about the middle of the seventeenth century, the pretension of resisting search by the protection of convoy, was put forward with much caution, and apparently for the first time, by Christina, Queen of Sweden, August 16th, 1653. Article 4th. "They shall in all possible ways decline that they, or any of those that belong to them be searched. For seeing they are only sent to prevent all inconvenience and clandestine dealings, it is expected that they may be believed, and suffered to pass and proceed on their course unmolested, with all such things as are under their care." It was restrained to neutral ports. Article 6th. "And more especially, for certain reasons, it is our command, that our men of war do chiefly, and in the beginning, steer their course to such ports as are neutral in the English and Dutch war, till we give any farther directions on that account. However, without any hindrance to our own subjects, that intend to carry on their own free trade to England and Holland without convoy." Thurloe's *St. Papers*, vol. 1, p. 425.

In 1655, it was taken up by Holland. "They have a design to hinder the *Protector* all visitation and search; and this by very strong and sufficient convoy; and by this means they will draw all trade to themselves and their ships." *Ibid.*, vol. 4, p. 203.

In May, 1656, there happened an actual rencounter on this subject between a fleet of merchantmen from Cadiz (Spain being then at war with England), under the convoy of De Ruyter, with seven men of war, and the commodore of some English frigates. "Antwerp. We have certain news of the arrival of De Ruyter in Zealand from Cadiz, from whence he brought stores of plate, mostly belonging to merchants of this city; he was met withal at sea by some English frigates, but finding themselves too weak they let him go." *Ibid.*, vol. 4, p. 740. See also the particular account of what passed, given by a Dutch officer to the States-General. "That upon De Ruyter declaring that there was not anything on board belonging to the King of Spain, they parted." *Ibid.*, vol. 4, p. 731. It appears, however, that the arrival occasioned great triumph in Holland and Flanders, and that the fleet was deeply laden with silver for the King of Spain, and the service of his armies in Flanders. "De Ruyter brought in his own ship, and others in his fleet, the sum of 20,000,000 (perhaps rials) of gold and silver, the greatest part for the King of Spain's use and the merchants of Brabant and Flanders." *Ibid.*, vol. 4, pp. 748, 732. The 12th article of the English Ordinance of 1664 might perhaps be pointed against these pretensions.

In another letter in the same collection, 21st September, 1657, from Nieuport, the Dutch Ambassador in England, we find the subject of convoy was strongly pressed at that time, and resisted on the part of this country, "respecting secret articles," concerning the visitation of ships which are convoyed under the flag of the State. I acquainted their Lordships, that of old all kings and States had made a difference between particular ships sailing upon their risks and adventures, and between ships of the State and those which pass the sea under their flag and protection. That their High and Mighty Lords were of an opinion that it does strengthen the security of this State, that the ships of the State and officers should be responsible, as it were, for the ships sailing under their convoy; and that which I had proposed in my last memorandum concerning the



now, or indeed at that time, for they are expressly censured by Lord Clarendon.<sup>1</sup>

But the article I refer to is not of those he reprehends, and it is observable that Sir Robert Wiseman, then the King's Advocate General, who reported upon the articles in 1673, and expresses a disapprobation of some of them as harsh and novel, does not mark this article with any observation of censure. I am, therefore, warranted in saying, that it was the rule, and the undisputed rule, of the British Admiralty. I will not say that that rule may not have been broken in upon in some instances by considerations of comity or of policy, by which it may be fit that the administration of this species of law should be tempered in the hands of those tribunals which have a right

same on behalf of their High and Mighty Lords was no new thing, but that plan had been most commonly proposed on all the treaties since the year 1651, in that manner that without regulating the same according to the said articles, the troubles at sea, whereof I had so often complained, could not be removed and prevented, and I alleged several examples. Upon which now one, then the other, of the said three Lords\* replied, and did very much insist, that it could not consist with their security; that they could not nor ought to trust so much to particular captains at sea; that it would be an introduction and encouragement to disaffected persons to assist the enemy, and urged especially that in no former treaties any such articles were found, and that their High and Mighty Lords had no reason to desire now any such novelty. I said that the practice on this side in regard of searching and visiting ships without difference was a new thing, and that the inhabitants of the United Netherlands, feeling the trouble and inconveniency of it, had reason to insist that it may be rectified by a good regulation." Vol. 6, p. 511. See also for the former conference, vol. 5, p. 663.

It appears that so many objections had arisen on the treaty proposed on the part of Holland, that it was found necessary to form an entirely new project. Vol. 6, pp. 523, 558.

In a subsequent letter from The Hague, 30th November, 1657, it appears that the treaty broke off on this difference. "Le Sicur Nieuport n'est pas encore ici arrivé, mais il escrit aussi d'avoir prins son congé. Il est fort croyable qu'il ne sera guère content d'avoir faillé à achever le traité de la marine; néanmoins, je m'imagine que la Hollande à present ne seroit pas fort marry de ne l'avoir pas achevé, pour ne se pas oster la liberté de visiter des mêmes en cette guerre contre Portugal." *Ibid.*, p. 621.

On the subject of search generally, without any expressed reference to convoy, there is this letter from Cromwell to General Montagu. "The secretary hath communicated to us your letter of the 28th, by which you acquaint him with the directions you have given for the searching of a flushing and other Dutch ships, which (as you are informed), have bullion and other goods aboard them belonging to the Spaniard, the declared enemy of this State. There is no question to be made but what you have directed therein is agreeable both to the laws of nations and the particular treaties which are between this commonwealth and the United Provinces, and, therefore we desire you to continue the said direction, and to require the captains to be careful in doing their duty therein. Hampton Court, 30th August, 1657."

\*Thurloe, Wolsely, Jones.

<sup>1</sup>*Lord Clarendon's Life*, p. 242 [vol. 2, p. 460].

to entertain and apply them; for no man can deny that a State may recede from its extreme rights, and that its supreme councils are authorized to determine in what cases it may be fit to do so, the particular captor having in no case any other right and title than what the State itself would possess under the same facts of capture. But I stand with confidence upon all fair principles of reason,—upon the distinct authority of Vattel,—upon the institutes of other great maritime countries, as well as those of our own country,—when I venture to lay it down, that by the law of nations, as now understood, a deliberate and continued resistance to search, on the part of a neutral vessel to a lawful cruiser, is followed by the legal consequence of confiscation.

3. The third proposed inquiry was, whether any special circumstances preceded, accompanied, or followed the transaction, which ought in any manner or degree to affect the application of the general principles?

The first ground of exemption stated on the part of the claimants is the treaty with Sweden, 1661, Article 12, and it was insisted by Dr. Lawrence, that although the belligerent country is authorized by the treaty to exercise rights of inquiry in the first instance, yet that these rights were not exercised in the manner therein prescribed. It is an obvious answer to that observation, that this treaty never had in its contemplation the extraordinary case of an armed vessel sent in company with merchantmen for the very purpose of beating off all inquiry and search. On the contrary, it supposes an inquiry for certain papers, and if they are not exhibited, or “there is any other just and strong cause of suspicion,” then the ship is to undergo search.<sup>1</sup> The

<sup>1</sup>It is said by Secretary Thurloe, in his conference with the Dutch Ambassador, December, 1656, “that the point of passes was very considerable to the State, and that the same was never agreed to in any treaty with any nation, but lately to Sweden.” Thurloe’s *St. Pap.*, vol. 5, p. 663.

A reference to the certificate of foreign magistrates, with a primary but inconclusive credit ascribed to them, appears to have been established in Denmark, by Frederick II, in 1583, as a custom house regulation respecting the customs and sound duties payable by foreign merchants,—speaking of abuses, “we, not minding any longer to suffer the same, do therefore will that henceforth every man which uses his trade of merchandise and navigation through our custom towns and streams do cause a certain and just brief of all the laden merchandises and goods to be comprehended in the certificates which he is to take under the seal of his magistrate, and deliver the same to our customers, with this warning, that if any man arrive there without such true and just certificate, and any hindrance and inconvenience do happen unto him in that respect, the ship being searched, that then he impute the same unto himself,

treaty, therefore, recognizes the rights of inquiry and search, and the violation of those rights is not less a violation of the treaty than it is of the general law of nations. It is said that the demand ought first to have been made upon the frigate. I know of no other rule but that of mere courtesy which requires this; for this extraordinary case of an armed ship travelling along with merchant ships is not a *casus fœderis* that is at all so provided for in the treaty; however, if it is a rule, it was complied with in the present instance, and the answer returned was, that, "they were Swedish ships bound to various ports in the Mediterranean, laden with iron, hemp, pitch and tar." The question then comes, what rights accrued upon the receipt of this answer? I say, first, that a right accrued of sending on board each particular ship for their several papers; for each particular ship, without doubt, had its own papers; the frigate could not have them; and the captors had a right to send on board them to demand those papers, as well under the treaty as under the general law. A second right that accrued upon the receiving of this answer was a right of detaining such vessels as were carrying cargoes so composed, either wholly or in part, to any ports of the enemies of this country; for that tar, pitch, and hemp, going to the enemy's use, are liable to be seized as contraband in their own nature, cannot, I conceive, be doubted under the modern law of nations; though formerly, when the hostilities of Europe were less naval than they have since become, they were of a disputable nature, and perhaps continued so at the time of making that treaty, or at least at the time of making that treaty which is the basis of it, I mean the treaty in which Whitlock was employed in the year 1656; for I conceive that Valin expresses the truth of this matter, when he says, page 68, "*De droit ces choses*" (speaking of naval stores), "*sont de contrabande aujourd'hui et depuis le commencement de ce siècle, ce qui n'étoit pas autrefois néanmoins*"; and Vattel, the best recent writer upon these matters, explicitly admits, amongst positive contraband, "*les bois et tout ce qui sert à la construction et à l'armement de vaisseaux de guerre.*" Upon this principle was founded the modern explanatory article of the Danish treaty, entered into in 1780,

and not unto us or ours; and if upon cause of suspicion the ships should be searched, notwithstanding that a particular certificate had been delivered; and that in them more merchants' goods should be found than were comprehended in the certificates which were brought in, then not only those goods, but the whole ship and goods, as being forfeited, shall be confiscated and seized upon." Promulged, 1583, Rym. Fœd., vol. 16, pp. 437, 352.

on the part of Great Britain, by a noble Lord,<sup>1</sup> then Secretary of State whose attention had been peculiarly turned to subjects of this nature. I am therefore of opinion, that, although it might be shown that the nature of these commodities had been subject to some controversy in the time of Whitlock, when the fundamental treaty was constructed, and that therefore a discreet silence was observed respecting them in the composition of that treaty and of the later treaty derived from it, yet that the exposition which the later judgment and practice of Europe has given upon this subject, would, in some degree, affect and apply what the treaties had been content to leave on that indefinite and disputable footing on which the notions then more generally prevailing in Europe had placed it. Certain it is, that in the year 1750, the Lords of Appeal in this country declared pitch and tar, the produce of Sweden, and on board a Swedish ship bound to a French port, to be contraband, and subject to confiscation, in the memorable case of the *Med Good's Hjelpe*.<sup>2</sup> In the more modern understanding of this matter, goods of this nature being the produce of Sweden, and the actual property of Swedes, and conveyed by their own navigation, have been deemed, in British courts of admiralty, upon a principle of indulgence to the native products and ordinary commerce of that country, subject only to the milder rights of preoccupancy and preemption; or to the rights of preventing the goods from being carried to the enemy, and of applying them to your own use, making a just pecuniary compensation for them. But to these rights, being bound to an enemy's port, they are clearly subject, and may be detained without any violation of national or individual justice. Thirdly, another right accrued, that of bringing in for a more deliberate inquiry than could be conducted at sea, upon such a number of vessels, even those which professed to carry cargoes with a neutral destination. Was there or was there not the just and grave suspicion, which the treaty refers to, excited by the circumstances of such number of vessels with such cargoes intended to sail all along the extended coasts of the several public enemies of this kingdom, under the protection of an armed frigate associated with them for the very purpose of beating off by force all particular inquiry? But supposing even that there was not, is this the manner in which the observance of the treaty or of the law of

<sup>1</sup>The late Earl of Mansfield.

<sup>2</sup>Lords, 1750.

nations is to be enforced? Certainly not by the treaty itself; for the remedy for infraction is provided in compensations to be levied, and punishments to be inflicted upon delinquents by their own respective sovereigns. Article 12. How stands it by the general law? I don't say that cases may not occur in which a ship may be authorized by the natural rights of self-preservation to defend itself against extreme violence threatened by a cruiser grossly abusing his commission; but where the utmost injury threatened is the being carried in for inquiry into the nearest port, subject to a full responsibility in costs and damages if this is done vexatiously and without just cause, a merchant vessel has not a right to say for itself (and an armed vessel has not a right to say for it), "I will submit to no such inquiry, but I will take the law into my own hands by force." What is to be the issue, if each neutral vessel has a right to judge for itself in the first instance whether it is rightly detained, and to act upon that judgment to the extent of using force? Surely nothing but battle and bloodshed, as often as there is any thing like an equality of force or an equality of spirit. For how often will the case occur in which a neutral vessel will judge itself to be rightly detained? How far the peace of the world will be benefited by taking the matter from off its present footing and putting it upon this, is for the advocates of such a measure to explain. I take the rule of law to be, that the vessel shall submit to the inquiry proposed, looking with confidence to those tribunals whose noblest office (and I hope not the least acceptable to them) is to relieve, by compensation, inconveniences of this kind, where they have happened through accident or error; and to redress by compensation and punishment, injuries that have been committed by design.

The second special ground taken on the part of the claimants was, that the intention was never carried into act. And I agree with Dr. Lawrence, that if the intention was voluntarily and clearly abandoned, an intention so abandoned, or even a slight hesitation about it, would not constitute a violation of right. But how stands the fact in the present case? The intention gives way, so far as it does give way, only to a superior force. It is for those who give such instructions to recollect, that the averment of an abandonment of intention cannot possibly be set up, because the instructions are delivered to persons who are bound to obey them, and who have no authority to vary. The intention is necessarily unchangeable; and being so, I do not see the person who could fairly contradict me, if I were to assert that the de-

livery and acceptance of such instructions, and the sailing under them, were sufficient to complete the act of hostility. However that might be, the present fact is, that the commander sails with instructions to prevent inquiry and search by force, which instructions he is bound to obey, and which he is prevented from acting upon to their utmost extent only by an irresistible force. Under such circumstances how does the presumption of abandonment arise? If it does, mark the consequences. If he meets with a superior force, he abandons his hostile purpose. If he meets with an inferior force, he carries it into complete effect. How much is this short of the ordinary state of actual hostility? What is hostility? It is violence where you can use violence with success; and where you cannot it is submission and striking your colors. Nothing can be more clear, upon the perusal of these attestations, than that this gentleman abandoned his purpose merely as a subdued person in an unequal contest. The resistance is carried on as far as it can be; and when it can maintain itself no longer, *fugit indignata*.

3. It is said that the papers were not immediately taken possession of nor proceedings instituted till long after the arrival in port. These are unquestionably irregularities; but I agree with the King's advocate in maintaining, that they are not such irregularities as will destroy the captor's right of proceeding, for the claimant had his remedy in the way of a monition. How these delays were occasioned, whether in consequence of pending negotiations (as has been repeatedly asserted in the course of the argument), I am not judicially informed. If such negotiations ever existed, I may have reason personally to lament that they have proved ineffectual. But the legal consequence of that inefficiency undoubtedly is, that the question of law remains the same as if no such negotiation had ever been thought of.

4. It is lastly said, that they have proceeded only against the merchant vessels, and not against the frigate, the principal wrong-doer. On what grounds this was done—whether on that sort of comity and respect which is not unusually shown to the immediate property of great and august sovereigns, or how otherwise—I am, again, not judicially informed; but it can be no legal bar to the right of a plaintiff to proceed, that he has for some reason or other declined to proceed against another party against whom he had an equal or possibly a superior title. And as to the particular case of one vessel which had obtained her release and a redelivery of her papers, the act of the cap-

tors may perhaps furnish a reasonable ground of distinction with respect to her own special case; but its effect, be it what it may, is confined to herself, and can be extended no farther.

I am of opinion, therefore, that special circumstances do not exist which can take the case out of the rule which is generally applicable to such a state of facts; and I have already stated that rule to be the confiscation of all the property forcibly withheld from inquiry and search. It may be fitting (for anything that I know), that other considerations should be interposed to soften the severity of the rule, if the rule can be justly taxed with severity; but I have neither the knowledge of any such considerations, nor authority to apply them. If any negotiations have pledged (as has been intimated) the honor and good faith of the country, I can only say that it has been much the habit of this country to redeem pledges of so sacred a nature. But my business is merely to decide whether, in a court of the law of nations, a pretension can be legally maintained which has for its purpose neither more nor less than to extinguish the right of maritime capture in war; and to do this, how? by the direct use of hostile force on the part of a neutral State. It is high time that the legal merit of such a pretension should be disposed of one way or other—it has been for some few years past preparing in Europe—it is extremely fit that it should be brought to the test of a judicial decision; for a worse state of things cannot exist, than that of an undetermined conflict between the ancient law of nations, as understood and practised for centuries by civilized nations, and a modern project of innovation utterly inconsistent with it; and, in my apprehension, not more inconsistent with it than with the amity of neighboring States, and the personal safety of their respective subjects.

The only remaining question which I have to consider is, the matter of expenses; and this I think myself bound to dispose of with as much tenderness as I can use in favor of individuals. It is to be observed, that the question itself was of an importance and delicacy somewhat beyond the powers of decision belonging to such persons. The authority of their country has been in some degree surprised in this matter. The captors have been extremely tardy in proceeding to adjudication. Attending to all these considerations, I think the claimants are clearly entitled to have their expenses charged upon the value of the property up to the time of the order for further proof. From that time, the property might have been withdrawn upon bail, and it is

no answer to the court to say that this gentleman or another gentleman did not think it advisable to commit their private fortunes in the extent of the security required. It is the business of foreign owners who have brought their ships and cargoes into such situations of difficulty, to find the means of relieving them when the opportunity can be used. I go sufficient lengths in allowing expenses for the further time in which orders could have been obtained from Sweden, and I fix this at the distance of two months from the order of further proof; and, condemning the ship and cargo, I direct all private adventures to be restored.

This is the substance of what I have to pronounce judicially on this case, after weighing with the most anxious care the several facts and the learned arguments which have been applied to them. I deliver it to my country, and to foreign countries, with little diffidence in the rectitude of the judgment itself; I have still more satisfaction in feeling an entire confidence in the rectitude of the considerations under which it has been formed.

**Letter from Mr. Merry, British Chargé d'Affaires at Copenhagen, to Count Bernstorff, Danish Secretary of State for Foreign Affairs, regarding the Right of Visitation at Sea<sup>1</sup>**

COPENHAGEN, *April 10, 1800.*

The importance which the British Government must necessarily attach to the event which took place in the month of December last in the vicinity of Gibraltar, between some frigates of the King and the frigate of His Danish Majesty named the *Haufeneu*, commanded by Captain Van Dockum, and the orders which have been in consequence sent me by my Court relative to this affair, impose on me the painful duty of repeating to you in writing the complaint on this subject, which I had the honor of representing to you by word of mouth,

<sup>1</sup>*Collection of State Papers*, vol. 10, p. 22. "In the differences which have arisen between Denmark and England on the subject of the right of visitation by sea, the details of the affair of the first Danish frigate taken by the English in the neighborhood of Gibraltar have never been officially published by the English Government. The above letter, in which these details are contained, is extracted from a French paper." *Ibid.*



in the audience which you were so kind as to grant me for that purpose about three days ago. The facts upon which the question turns in this business are in themselves very simple, and I believe such as we are already agreed upon; that is to say, the English frigates met the Danish frigate upon the high sea escorting a convoy. The English commander, judging it proper to avail himself of the right of visiting this convoy, sent on board the Danish frigate to demand from the captain his destination. The latter having answered that he was then going to Gibraltar; the other replied, that if he was going to stop at Gibraltar he would not visit his convoy; but in case he should not cast anchor in that port, that the visit would certainly take place. Captain Van Dockum then informed the officer who had come on board, that he would in such case make resistance. Upon this the English captain made the signal to examine the convoy. The boat of the frigate, the *Emerald*, prepared to execute this order; some musketry was fired down from the Danish frigate; and one of the English sailors was thereby severely wounded. This frigate also took possession of a boat of the English frigate, the *Flora*, and did not release it until after the English captain had made Captain Van Dockum understand, that, if he did not surrender it immediately, he should commence hostilities. The Danish frigate then repaired with its convoy to the Bay of Gibraltar. There some discussions took place upon this subject between Lord Keith, Admiral and Commander of the naval forces of His Britannic Majesty in the Mediterranean, and Captain Van Dockum, whom Lord Keith thought proper to consider as personally responsible, and guilty of the injury done to a subject of his King, thinking it impossible that this captain could be authorized to act in such a manner by the instructions of his Court. To clear up the business, the English admiral sent an officer to Captain Van Dockum, praying that he would show him these instructions, and explain their nature. The latter refused to let the admiral see the instructions, alleging that he was forbid to do so; but he told the officer that they imported that he should not permit visitation of his convoy, and that in firing upon the King's boats he only fulfilled his orders. The captain himself afterwards made a like answer, and upon his word of honor, in conversation with Lord Keith, in presence of the Governor of Gibraltar; but he promised at the same time to surrender himself before a judge, and to give notice of his appearance; and upon this promise he was told he might return on board. Upon his having entered his boat, he sent a letter to the

admiral, in which he refused to give the notice required. These discussions were terminated by a declaration which Lord Keith made to Captain Van Dockum, that, "if he neglected to submit, and should thereby attempt to withdraw himself from justice, the affair should be represented to his Court."

This, Count, is the statement of the facts which have occasioned the complaint which I am charged to lay before the Danish Government. I flatter myself that you will find it accurate, and conformable to the correspondence between Lord Keith and Captain Van Dockum, in your possession, as you have done me the honor to inform me.

The right of visiting and examining merchant vessels on the high sea, of whatever nation they may be and whatever their cargoes or destinations, the British Government regards as the incontestable right of every belligerent nation; a right founded upon the law of nations, and which has been generally admitted and acknowledged. It follows of consequence, that the resistance made to this visitation by the commander of a ship of war belonging to a friendly Power, must necessarily be considered an act of hostility, such as he is persuaded could not be enjoined by the commanders of ships of war of His Danish Majesty by their instructions. His Britannic Majesty has therefore no doubt of the displeasure which His Danish Majesty will feel on learning this violent and indefensible procedure of an officer in his service; and the King is persuaded of the promptitude with which His Danish Majesty will make to His Majesty the formal disavowal and apology which he has so just a right to expect from him in the present case, with a reparation proportioned to the nature of the offense committed.

I am specially charged, Count, to make of you a demand of this disavowal, apology, and reparation.

The confidence which I have in the acknowledged justice of His Danish Majesty, induces me to hope that this simple and friendly representation will suffice to obtain it with the promptitude which so important a case requires; but I ought not at the same time to conceal from you, that however great and sincere may be the desire of the King my master to maintain and cultivate the closest harmony and friendship with the Court of Denmark, nothing will induce His Majesty to depart from this just demand.

I have the honor to be, etc.,

ANT. MERRY

**Reply of Count Bernstorff to Mr. Merry, April 19, 1800<sup>1</sup>**

The undersigned, Secretary of State for Foreign Affairs, having laid before the King, his master, the representations which Mr. Merry did him the honor to address to him under date of the 10th instant, with regard to an encounter which took place in the month of December last between a Danish frigate and certain English frigates, has just been authorized to make the following reply thereto.

In the first place, it should be observed that the version of the affair as set forth in Mr. Merry's note is not absolutely in accord with the account given by the commander of the King's frigate; and, although the difference between the reports of this affair bears upon minor points, we can not refrain from calling attention to it, inasmuch as the account on which the British complaints are founded seem to compromise the honor and the good faith of Captain Van Dockum.

According to this account, that officer is alleged to have given his promise to Lord Keith to appear personally before an English court, and to have broken his word from the moment he returned to his vessel, while it is stated in the report of the said Captain that he constantly and positively declared, as became him, "that, being vested with the command of one of the King's war-ships, he could be responsible for his conduct to his sovereign alone."

The reports on both sides agree for the rest on the principal fact. The question involved is "whether the English frigates were in the right in attempting, or the commander of the Danish frigate in preventing visitation of the convoy under the escort of the latter."

Custom and treaties, it is true, have conferred upon the belligerent Powers the right to have their war-ships or privateers visit unconvoyed neutral vessels. But since this right is not a natural but a purely conventional one, its effect can not, without injustice or lawlessness, be arbitrarily extended beyond what has been agreed upon or granted. But none of the independent maritime Powers of Europe has ever, so far as the undersigned is aware, recognized the right to visit neutral vessels under escort of one or more war-ships, and it is evident that they could not do so without degrading their flags and renouncing an essential part of their own rights.

Far from acquiescing in this hitherto unknown pretension, the ma-

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 7, p. 130.

jority of these Powers have, since there has been question of this alleged right, deemed it their duty to set forth the opposite principle in their conventions relating to matters of this nature, as is evidenced by a great number of treaties concluded between the most important Courts of Europe.

This distinction made between convoyed [and unconvoyed] vessels is as just as it is natural, for the former should not be placed in the same category as the latter.

The visiting by privateers or war-ships of belligerent Powers of unconvoyed neutral vessels is founded on the right to ascertain the flag to which they belong and to examine their papers. It is merely a question of determining whether they are neutral and whether their papers are in conformity with requirements. The papers of these vessels having been found to be according to rule, no further search may legally be undertaken. Hence it is the authority of the Government in whose name these documents have been drawn up and issued that gives the belligerent Power the necessary assurance.

But the neutral Government, by convoying with its war-ships the commercial vessels of its subjects, gives belligerent Powers a guarantee that is more authoritative and still more positive than is that furnished by the documents with which these vessels are furnished; and it could not, without dishonor to itself, admit any doubts or suspicions on this point, for they would be as injurious to it as they would be unjust on the part of those who should entertain or manifest them.

If the principle should be admitted that the convoy given by a sovereign did not guarantee the vessels of his subjects from search by foreign war-ships or privateers, it would follow that the most formidable squadron would not have the right to save the vessels entrusted to its protection from search by the weakest privateer.

But it can not be reasonably presumed that the English Government, which has always, and for the best of reasons, shown itself to be jealous of the honor of its flag, and which in the naval wars in which it has not taken part has vigorously maintained the rights of neutrality, would, if the case arose, consider itself bound to suffer such an affront; and the King has too great confidence in His Britannic Majesty's equity and integrity to harbor the suspicion that it can be his desire to arrogate to himself a right which, under similar circumstances, he would not recognize as belonging to any other independent Power.

It would seem to be sufficient to apply to the act in question the

necessary deduction from these considerations in order to demonstrate that the commander of the King's frigate, in resisting an act of violence, which he had no reason to expect, only did his duty, and that it was the English frigates which committed an act in violation of the rights of a neutral sovereign friendly to His Britannic Majesty.

The King hesitated to make formal complaint, so long as he looked upon the affair as merely a misunderstanding that could be cleared up by friendly explanations on the part of the commanders of the respective naval forces kept by the two Governments in the Mediterranean; but finding himself, with great regret, disappointed in this hope, he must needs insist upon the reparation which is due him and which the justice and friendship of His Britannic Majesty would seem to assure to him.

C. BERNSTORFF

**Note from Count Wedel-Jarlsberg, Envoy Extraordinary of His Danish Majesty, to Lord Grenville, British Secretary of State for Foreign Affairs, relative to the Capture of the Danish Frigate "Freya," July 29, 1800<sup>1</sup>**

The undersigned, Envoy Extraordinary of His Danish Majesty, has the honor to bring to the attention of His Royal Majesty the following facts:

On the 25th instant His Danish Majesty's frigate *Freya*, commanded by Captain Krabbe, which was convoying six vessels, was encountered at the entrance to the Channel by six English war-ships under the command of Captain Baker. An officer from one of these ships was sent on board the *Freya*, informed himself of its destination, etc., and returned with the customary information. But shortly after he came back with orders to visit the convoy. Permission to do so was refused him. In the meantime the other frigates approached, and one of them fired a shot at one of the vessels of the convoy, which was answered by a shot from the Danish frigate across the bows of the vessel that

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 7, p. 133.

began the attack. The English commander's frigate came nearer and repeated his demand, which was refused by the Danish commander, who protested "that the convoy had not on board any article of contraband," and declared "that, in conformity with his instructions, he would not allow any boat to approach the convoy." A boat was sent notwithstanding, and the *Freya* fired a shot to turn it back, but did not hit it. The English commander immediately fired a broadside; but it was not until the sight of two wounded men convinced him that effective hostilities had been begun that he returned the broadside, repelled force with force, and continued the combat with the said flag-ship and three others, until he found himself obliged to yield to the superior strength of his assailants and to lower his flag after having honorably defended and upheld it to the bitter end. The English thereupon took possession of the Danish frigate, held Captain Krabbe prisoner aboard the flag-ship, and brought him with the prize and convoy to the Dunes.

Thus in the midst of constant and secure peace between two friendly and allied nations there has occurred an unheard-of provocation, the enormity of which is sealed with the innocent blood of the subjects of both.

The affair that has just taken place is a direct attack on the independence of Denmark, a violation of the most sacred rights of the sovereign, and an act of aggression so violent that it would give rise to the most serious consequences, if it could be presumed that the instructions of the British Government had authorized such extreme action of a character so incompatible with the friendship existing between the two Courts.

But, in spite of the unfortunate impression created by the facts mentioned, it is a great consolation to the undersigned to feel that the English officers merely overstepped their instructions through over-eager and ill-advised zeal, and that therefore His Britannic Majesty will not hesitate, in accordance with his well-known sentiments, to show his great indignation over the act and to give His Danish Majesty the most complete satisfaction.

It is under that reservation and while waiting for orders from his Court on this subject that the undersigned confines himself now to a ministerial demand for the prompt restitution of the frigate *Freya* and its convoy, and reparation at the expense of the British Government for all damage resulting from the hostilities mentioned.

His Excellency Lord Grenville, to whom the undersigned has the honor to address this note, will certainly share his just resentment of the aforesaid unfortunate incident and his hopes that satisfactory reparation for the offense may be made at once. The undersigned therefore hastens to request most urgently that his Excellency use his good offices to this end, and with the utmost confidence in his Excellency's just and equitable point of view, he has the honor to reiterate the assurance of his consideration and respect.

WEDEL-JARLSBERG

**Reply of Lord Grenville to Count Wedel-Jarlsberg, July 30, 1800<sup>1</sup>**

The undersigned, His Majesty's principal Secretary of State for Foreign Affairs, has had the honor to lay before the King the note which he received yesterday from Count Wedel-Jarlsberg, Envoy Extraordinary and Minister Plenipotentiary from the King of Denmark.

It was with the greatest surprise and concern that His Majesty received the first accounts of the transaction to which that note relates. Studiously desiring to maintain always with the Court of Copenhagen those relations of friendship and alliance which had so long subsisted between Great Britain and Denmark, His Majesty has, during the whole course of his reign, given repeated proofs of these dispositions, which he had flattered himself were reciprocally entertained by the Government of His Danish Majesty. And notwithstanding the expressions made use of in Count Wedel's note, His Majesty can not even yet persuade himself that it is really by the orders of the King of Denmark, that this state of harmony and peace has been thus suddenly disturbed, or that a Danish officer can have acted conformably to his instructions, in actually commencing hostilities against this country by a wanton and unprovoked attack upon a British ship of war, bearing His Majesty's flag, and navigating the British seas.

<sup>1</sup>*Collection of State Papers*, vol. 10, p. 70.

The impressions which such an event has naturally excited in His Majesty's breast have received additional force from the perusal of a note, in which satisfaction and reparation are claimed as due to the aggressors from those who have sustained this insult and injury.

His Majesty, allowing for the difficulty in which all neutral nations were placed by the unprecedented conduct and peculiar character of his enemy, has on many occasions, during the present war, forbore to assert his rights, and to claim from the Danish Government the impartial discharge of the duties of that neutrality which it professed a disposition to maintain. But the deliberate and open aggression which he has now sustained can not be passed over in a similar manner. The lives of his brave seamen have been sacrificed, the honor of his flag has been insulted, almost in sight of his own coasts; and these proceedings are supported by calling in question those indisputable rights founded on the clearest principles of the law of nations, from which His Majesty never can depart, and the temperate exercise of which is indispensably necessary to the maintenance of the dearest interests of his empire.

The undersigned has, in all his reports to His Majesty, rendered full justice to the personal dispositions which he has uniformly found on the part of Count Wedel, to remove all grounds of misunderstanding between the two countries. He can not, therefore, now forbear to urge him to represent this matter to his Court in its true light, to do away with those false impressions, under which (if at all) a conduct so injurious to His Majesty can have been authorized; and to consult the interests of both countries, but especially those of Denmark, by bearing his testimony to the dispositions with which His Majesty's Government is animated; and by recommending to his Court, with all that earnestness which the importance of the occasion both justifies and requires, that these dispositions may, in so critical a conjuncture, find an adequate return; and that a speedy and satisfactory answer may be given to the demand which His Majesty has directed to be made in his name at Copenhagen, both of reparation for what is past, and of security against the repetition of these outrages.

In order to give the greater weight to His Majesty's representations on this subject, and to afford at the same time the means of such explanations respecting it, as may avert the necessity of those extremities to which His Majesty looks with the greatest reluctance, His



Majesty has charged Lord Whitworth with a special mission to the Court of Denmark, and that Minister will immediately sail for his destination.

That Court can not but see in this determination a new proof of the King's desire to conciliate the preservation of peace with the maintenance of the fundamental rights and interests of his empire.

GRENVILLE

July 30, 1800.

#### Reply of Count Wedel-Jarlsberg to Lord Grenville, August 2, 1800<sup>1</sup>

The undersigned, Envoy Extraordinary of His Danish Majesty, confines himself to acknowledging the ministerial note of Lord Grenville, dated the 30th ultimo, in reply to his of the 29th. He immediately informed his Court thereof, as well as of the mission with which Lord Whitworth is charged to Denmark.

But pending the transfer to Copenhagen of the discussion of the hostilities committed, the undersigned hastens to repeat his urgent demand with regard to the restitution of the frigate *Freya*, in such condition that it can continue its voyage, and with regard to its convoy. Since the British Government, by means of superior forces, succeeded in making it impossible for His Danish Majesty's frigate to protect its convoy from the carrying out of an act that is contested and in dispute, and since both the frigate and its convoy were brought into an English port, where the searching of the vessels was effected without revealing any contraband article in their innocent cargoes, the undersigned is pleased to believe that the British Government will, by its acts, give the Government of Denmark conciliatory assurance that it is far from desiring to aggravate the difference by a continuation of hostile action, and, by restoring the vessels mentioned, show that it treats them differently from those captured from the enemy.

The undersigned begs Lord Grenville to be good enough to support his just demand with his good offices and to consider compliance

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 7, p. 137.

therewith as paving the way for an explanation that will wipe out the bad impression of the past and ensure the continuance of the harmony which has been a source of such satisfaction and happiness to the sovereigns of the two nations.

WEDEL-JARLSBERG

**Reply of Lord Grenville to Count Wedel-Jarlsberg, August 4, 1800<sup>1</sup>**

The undersigned, His Majesty's Principal Secretary of State for Foreign Affairs, has had the honor to lay before the King the note which was transmitted to him on the second of this month by Count Wedel-Jarlsberg, Envoy Extraordinary and Minister Plenipotentiary of His Danish Majesty.

As regards the demand made by Count Wedel-Jarlsberg for the release of the Danish frigate *Freya* and its convoy, he has orders from His Majesty to inform the Minister that, however much His Majesty may desire to manifest on all occasions his regard and friendship for the King of Denmark, nevertheless, since the capitain of the *Freya* saw fit to begin, without any provocation, actual hostilities with one of his war-ships and wantonly to sacrifice the lives of subjects of both sovereigns in a fight into which he entered without cause and which could only lead to unnecessary shedding of blood, the frigate and the convoy which was under its orders must needs await the outcome of the suit, which shall be brought in the name of His Majesty for the satisfaction due for such unwarranted and blameworthy conduct.

This action on the part of His Majesty is all the more necessary, since the present case is not the first in which His Majesty has lately had cause to complain of like conduct, and since the extreme patience which was displayed in the case of the *Phoenix* appears to have produced an effect which has so little fulfilled the hope and just expectation of His Majesty. But His Majesty anticipates with pleasure the time when the Court of Copenhagen shall, by action in conformity

<sup>1</sup>Translation. French text, *ibid.*, p. 138.

with established custom and the law of nations, as well as with the honor of His Majesty's flag, make it possible for His Majesty to manifest for his part sentiments of friendship for a Power to which he is bound by so many ties.

GRENVILLE

**Note from Lord Whitworth, British Minister at Copenhagen, to Count Bernstorff, relative to the Capture of the Danish Frigate "Freya," August 12, 1800<sup>1</sup>**

His Britannic Majesty, animated by the most sincere desire to maintain uninterruptedly with the Court of Copenhagen those relations of friendship and alliance which have so long existed between Great Britain and Denmark, has been surprised and grieved at the hostile step by which that Government has broken these relations. His Majesty has never ceased to give the most evident proof of this disposition on his part; and he has flattered himself with the hope of a return to such sentiments on the part of His Danish Majesty.

In spite of the expressions which His Danish Majesty's Minister has employed in an official note which he has seen fit to present to his Ministry on the subject of the detention of the frigate *Freya* and its convoy, His Majesty cannot even yet believe that it is really by order of His Danish Majesty that peace and good understanding have been so suddenly interrupted or that a Danish officer has acted in accordance with his instructions in beginning hostilities against his States by a premeditated and unprovoked attack on an English war-ship, flying His Majesty's flag and sailing in British seas.

The feeling which such an event would naturally arouse has grown more intense as a result of a demand for reparation, alleged to be due the aggressors by those who suffered insult and injury.

His Majesty, appreciating the difficulties to which neutral nations have been exposed by the unparalleled conduct and peculiar character of his enemy, has on various occasions in the course of this war, abstained from demanding his rights and has shut his eyes to the partial

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 7, p. 140.

fulfilment of the duties of neutrality, which the Danish Government has professed itself as being desirous to observe; but the open and deliberate attack which he has lately suffered cannot be looked upon with the same indifference. The blood of his brave sailors has been shed; the honor of his flag has been sullied almost in sight of his own coasts; and these acts have been upheld by throwing doubt upon incontestable rights founded on the clearest principles of the law of nations, which His Majesty can never abandon, and the calm and continued maintenance of which is absolutely necessary for the preservation of the most cherished interests of his empire.

The undersigned is therefore specially charged to present this matter in its true light, to remove the false impressions which may have permitted, but cannot justify, a course of conduct so injurious to His Majesty, and to demand with the energy that the importance of the crisis requires reparation for the act and security against the repetition of similar outrages.

The undersigned flatters himself with the hope that the Danish Ministry will do him the justice to believe that, while he manifests a just solicitude for the interests of the King his master, he is not indifferent to the interests of Denmark, which has at all times been linked to Great Britain by ties of friendship and alliance. He hopes that he will find in the Danish Ministry a disposition similar to his own, and that their negotiations will result in satisfaction such as Great Britain itself would not hesitate to give in such a case and a renewal of confidence and good understanding between the two States. Such is the object of his mission, and such is the sincerest wish of his heart.

WHITWORTH

### Reply of Count Bernstorff to Lord Whitworth, August 16, 1800<sup>1</sup>

The King learned with as much regret as surprise of the incident which has caused the detention of his frigate, the *Freya*, and of the convoy that was under its protection. His Majesty, however, far from presuming that the attack on the security of a convoy sailing under the

<sup>1</sup>Translation. French text, *ibid.*, p. 141.

protection and safeguard of his flag could have been premeditated, or that so unequal and so unexpected a fight could have been the result of an order emanating from the British Government. He saw in this unfortunate encounter nothing more than the act of an over-zealous commander of an English squadron, who made unwarranted use of his superiority in strength over a foreign vessel which was sailing in waters along the coast of a country between which and Denmark there exists bonds of friendship and alliance and was therefore unprepared for a hostile surprise.

But nothing can equal the astonishment of His Majesty in learning from the note which the undersigned had the honor of receiving from Lord Whitworth that the British Government, in refusing the satisfaction which is manifestly due, retorts with a demand against Denmark, imputing to it without scruple an act of aggression, which is disproved by a simple examination of the facts.

It is indeed a confusion of the clearest conceptions and an inversion of the most natural and least equivocal sense of things and words to hold that lawful resistance, provoked by a gratuitous attack upon the rights and honor of an independent flag, should be considered an act of aggression, and of premeditated aggression.

Demonstration is superfluous when facts speak for themselves; and Denmark does not fear to appeal in this matter to the judgment of all the impartial Powers of Europe.

If it were possible to suppose that the King had any idea of attacking Great Britain or any hostile intentions against that country, His Majesty would not hesitate openly to disavow it; but no such possibility exists, and the English Government itself, if it weighs the circumstances calmly and without prejudice, could have no suspicion in this regard.

But even supposing that the commander of the Danish frigate had overstepped the limits of his duty and that the English Government was thereby warranted in demanding satisfaction, it still clearly follows from the nature of the case that this demand could not be made until after the frigate and its convoy had been released, Denmark clearly being, until that is done, the injured party, and consequently the only one who has grounds for complaint.

It is this preliminary demand to release without delay the King's frigate and the convoy under its protection, which Lord Whitworth *is requested to transmit to his Court and to support with his good*

offices. He will be good enough to add the assurance that the King will eagerly accept any proposition compatible with the honor of his flag and the dignity of his crown, which tends to maintain harmony between the two Courts, as this always has been and always will be one of the principal objects desired and sought by Denmark.

The King does not deem it necessary to reiterate to His Britannic Majesty protestations of friendship on an occasion which has neither belied it nor placed it in doubt. Nor does His Majesty permit himself to ask for evidence of the friendship of his august ally. He merely appeals to the equity of a virtuous and upright sovereign, who surely does not believe that he will add to the glory of his reign or to the splendor of his power by an act of injustice toward him.

The undersigned, who has long been prepossessed in favor of Lord Whitworth, is pleased to have confidence in his personal sentiments and trusts that he may succeed in winning the confidence of Lord Whitworth.

C. BERNSTORFF

#### **Reply of Lord Whitworth to Count Bernstorff, August 21, 1800<sup>1</sup>**

The undersigned has the honor to acknowledge receipt of the official note which Count Bernstorff has addressed to him in reply to the note which he had the honor to hand him the day after his arrival, the object of which was "to demand in the name of the King satisfaction for the insult to the flag by the unprovoked attack of a Danish officer, acting in accordance with the orders of his Court, and security against similar outrages."

As for the demand "to release the Danish frigate and its convoy, which Count Bernstorff still insists was unjustly arrested," the undersigned believes that he is warranted in holding that, according to the opinion of the most enlightened jurists who have treated this subject, "any neutral vessel which resists search in such a case becomes by that act liable to confiscation and may be taken as a lawful prize," and that

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 7, p. 143.

this principle has at all times been universally recognized, except by those who have had some special interest in disregarding it.

Furthermore, the right that the King claims is universal and necessarily results from a state of war. Special treaties are applicable only to modifications and limitations of this right.

If the principle is once admitted that a Danish frigate may legally guarantee from search six merchant ships of that nation, it naturally follows that that Power or any other Power whatsoever may by means of the smallest war-ship extend the same protection over the entire commerce of the enemy in all parts of the world.

It will only be necessary to find in the whole civilized world a single neutral State, however insignificant, sufficiently well disposed toward our enemies to lend them its flag and to cover their commerce, without incurring the slightest risk; for the moment examination is not permitted, fraud need not fear discovery.

The undersigned is pained to learn from the note which Count Bernstorff has just handed him that, far from showing a desire to satisfy the just demand of the King his master, the Danish Government still persists in maintaining not only the principle upon which it bases its attack, but also the right to defend it by force of arms.

In this state of affairs, the undersigned has no alternative than strictly to perform his duty by again insisting on the satisfaction demanded by the King his master and by declaring to Count Bernstorff that, in spite of his sincere desire to be the instrument of reconciliation between the two Courts he shall be obliged to leave Copenhagen, together with the entire English mission, within eight days from the date of the signing of this note, unless the Danish Government adopts in the meantime a course more in conformity with the interests of the two countries, and especially those of Denmark, with which His Majesty has constantly desired and still desires to continue on terms of friendship and alliance.

The undersigned has therefore the honor to repeat to Count Bernstorff that it is necessary for him, as well as the King's mission, to quit Copenhagen within eight days, unless a satisfactory reply is given him before the expiration of that period. He begs Count Bernstorff to be good enough to accept the assurances of his most distinguished consideration.

WHITWORTH

**Reply of Count Bernstorff to Lord Whitworth, August 26, 1800<sup>1</sup>**

The undersigned, having laid before the King his master the note which Lord Whitworth did him the honor to hand him on the 21st instant, has just been authorized to make the following reply.

His Majesty is extremely surprised to learn that Lord Whitworth attempts to base the continued detention of the frigate *Freya* and of its convoy on the principle that a neutral vessel which resists visitation by one or more armed vessels belonging to a belligerent Power renders itself, merely by this resistance, liable to confiscation. This principle, such as it is, quite generally though not universally recognized, applies only to unconvoyed merchant ships, which, not being considered as armed, can only expect security from the innocence of their voyage, the respect due their flag, and the genuineness of the documents with which they have been furnished by their Governments.

The extension of the application of this principle to resistance by a war-ship on behalf of vessels under its convoy, would be as arbitrary as it is novel, and absolutely contrary to the very nature of the principle mentioned.

If the British Government considers that it has authorities or proofs in support of its contention, Denmark must ask that it state them more specifically, in order to meet them with the authorities and proofs that have always appeared to the Danish Government to be so decisively in favor of its stand, as to determine its opinion in this regard, without its ever having had to sacrifice its conviction to its individual interests.

As to the general question, concerning the alleged right to visit neutral vessels under convoy, the undersigned must call attention to the contents of the note which he handed to Mr. Merry under date of April 19.

If Lord Whitworth believes that he has destroyed the force of the arguments set forth in that note by his observation that by means of the right guaranteeing from visit merchant ships which are under the escort of a war-ship, the least powerful neutral State would be able with impunity to cover with its flag illicit commerce, the undersigned begs to remark that a Government which would degrade itself to the point of lending its flag to such an act of fraud would thereby place itself beyond the pale of neutrality and consequently justify the belligerent Power, to whose prejudice the said fraud had been committed,

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 7, p. 145.



to take measures which, under ordinary circumstances, would not be permitted.

The State that neglects its duties undoubtedly exposes itself to the risk of losing its rights; but suspicion of base conduct would be as injurious to the Government which did not deserve it as it would be dishonoring to the Government which should advance such suspicion without grounds. Such a situation, however, could not exist between Denmark and Great Britain. The English Government are surely not ignorant of the fact that Danish officers in command of convoys are held personally responsible to see that the cargoes of the vessels belonging to these convoys do not contain articles prohibited by the rules of the law of nations or by treaties existing between Denmark and belligerent Powers; and it is easy to see that it would be incomparably more difficult to elude the vigilance of these officers than the search of those who should attempt to exercise on these vessels a right, which is as odious in principle as it is futile in its effect.

This essential difference between the principles of the two Courts bringing into this discussion special difficulties, there would appear to be a no more fitting way to remove them than to have recourse to the mediation of a third Power; and the King hesitates the less to propose to His Britannic Majesty the mediation of the Emperor of Russia, since that monarch, the friend and ally of both sovereigns, will certainly have nothing more at heart than to bring about their reconciliation and to prevent an unfortunate misunderstanding. The King will entrust his interest with the utmost confidence to this mediation; and His Majesty will eagerly adopt any proposals of His Majesty the Emperor of Russia tending to effect a settlement compatible with the honor of the two Courts.

The undersigned does not doubt that Lord Whitworth will see in this proposal fresh proof of the sincere moderation of the King and of his unalterable desire to keep the friendship of His Britannic Majesty. He begs him to be good enough to transmit it in this sense to his Court. The King would regret the more to see him depart, since His Majesty had regarded his mission as a pledge of the conciliatory intentions of the London Court and was pleased to believe that his personal sentiments would help to expedite a settlement, for which His Majesty has offered and still offers him the greatest facilities.

The undersigned has the honor to beg Lord Whitworth to accept renewed assurances of his most distinguished consideration.

C. BERNSTORFF

**Reply of Lord Whitworth to Count Bernstorff<sup>1</sup>**

*August 27, 1800.*

Lord Whitworth requests the Count de Bernstorff to observe, that if he does not animadvert upon the arguments he has made use of upon this occasion, it is because he thinks he shall render a much more essential service to his Court, as well as to that of Copenhagen, by abstaining from all that might remove them from the object which both ought to have equally at heart. With respect to the mediation which the Count de Bernstorff proposes as the most proper means of doing away the difficulties of this discussion, the undersigned thinks he can reply with certainty, that, in spite of the apparent misunderstanding which may have existed between the two Courts, there is no sovereign in Europe to whom the King would refer himself, with respect to his dearest interests, with more confidence, than the Emperor of Russia; no one is more ready than the undersigned to do justice to the loyalty and zeal of that sovereign for the good cause. But he believes that, in a similar case, it would be useless to recur even to that intervention, however respectable it may be; and that the Court of Denmark, introducing into the discussion the same frankness as the Court of London, and the same desire of preventing speedily all objects of fatal misunderstanding, will find out the means of effecting this object without difficulty.

WHITWORTH

**Declaration by which His Majesty the Emperor of Russia invited Sweden, Prussia and Denmark to conclude a Convention for the Reestablishment of an Armed Neutrality, August 27, 1800<sup>2</sup>**

Europe gave its approval to the measures that were taken by the majority of maritime Powers for the establishment, as a sacred pact, of the principles of a wise and impartial neutrality, when a naval war, which had broken out in 1780 between two great Powers, laid upon

<sup>1</sup>*Collection of State Papers*, vol. 10, p. 97.

<sup>2</sup>August 15, 1800, old style. Translation. French text in *British and Foreign State Papers*, vol. 1, pt. 1, p. 334.

the other nations the obligation of providing for the security of their subjects' commerce and navigation. Every act that is founded on justice should obtain general assent; and in this case all that was done was to put again into effect the principles of the law of nations. Russia had at that time the inestimable advantage of carrying the reestablishment of these principles to their ultimate goal, and she was, so to speak, the regulator of the different measures which should cause these principles to be respected. Each of the Powers which acceded thereto enjoyed innumerable advantages therefrom, and this arrangement served as a basis for all the treaties of commerce that Russia concluded thereafter. General approval had made of the principles on which it rested a kind of code of the nations; it was at the same time the code of humanity. The common interest of mankind guaranteed its maintenance and execution.

But perhaps there was too little effort to give these principles a new sanction at the time when, a great Power having reached the point of dissolution, nearly all the other nations felt the fatal influence thereof; when the majority of political bonds were broken or took another direction as a result of the war which was not long in breaking out—a war so different from those that had preceded it, and whose events, which were so multifarious and extraordinary, destroyed all former combinations. Attention being absorbed by events of such vital interest, it was impossible to give the necessary care to the maintenance of these salutary stipulations. On the one hand, justice should have led the belligerent Powers to present a method of guarantee; and the neutral Powers, which were confident that this would be done, believed that they had sufficiently ensured freedom of navigation and commerce to cause it to be respected at least by legitimate Governments, when a new incident proved to what extent independence of Crowns can be exposed to danger, unless the principles and maxims were reestablished, which alone can serve, during this war, as the basis for tranquillity and security of neutral Powers.

On July 13/25 last, an English frigate met at the entrance to the Channel a Danish frigate which was convoying to different ports several vessels of its nation. The Danish captain, after his declaration that he had no article of contraband on board, having resisted the visitation of his vessel, was attacked and forced to yield to superior strength. It, as well as its convoy, was taken to English ports.

The first care of His Danish Majesty, the friend and ally of His

Majesty the Emperor of all the Russias, was to inform this latter sovereign of this event and to consult him as to how they should regard this self-evident violation of the law of nations and the principles of neutrality which formed the basis of the treaty of commerce between Denmark and Russia.

Although His Imperial Majesty up to the present moment can not but believe that such a violation will be highly disapproved of by His Britannic Majesty, and although His Majesty is pleased to believe that the equity of His Britannic Majesty will induce him not only to refuse to approve this act, but also to give the Court of Denmark satisfaction proportional to the insult, nevertheless His Imperial Majesty, in order to prevent the recurrence of such acts of violence in future, recognizes the necessity of reestablishing the bases of neutrality, under whose protection his subjects, as well as those of neutral Powers, may enjoy the fruits of their industry and all the advantages of neutral nations, without being exposed hereafter to arbitrary measures which none of the belligerent Powers can permit with impunity against them.

As it is clearly to the interest of His Imperial Majesty, both with respect to the navigation of his own subjects and that of the nations nearest to his ports, to protect from such acts of aggression or violence the seas which bathe the shores of Russia, he invites the Powers that have ports in these regions, and particularly Their Majesties the Kings of Prussia, Denmark, and Sweden, to accede, together with His Imperial Majesty, to the measures that he shall propose to them successively to reestablish in all their force the principles of armed neutrality, and thus to ensure the freedom of the seas. His Majesty announces at the same time to these sovereigns, by the present declaration, that he will use all the force that his dignity requires to uphold the honor of his flag and the flags of his allies, to guarantee their subjects from any violation of the rights sanctioned by all peoples, and to secure for them, under the protection of their respective Governments, all the advantages that result from freedom of commerce and navigation.

His Imperial Majesty, likewise animated by sentiments of justice and impartiality, declares that, while he shall establish a rule for the strict observance of the rights of neutrality, he will not impair the force of any one of them, and that the measures which he shall in his wisdom adopt shall guide the conduct of his commanding officers and

subjects, in accordance with the principles of the most rigorous equity, and in such a way that the belligerent Powers themselves will be constrained to recognize the necessity for his provisions and the beneficent purity of his views.

The Minister of His Imperial Majesty addresses, by order of his sovereign, the present declaration to his Excellency Baron de Stedingk, Ambassador Extraordinary of His Majesty the King of Sweden, requesting him to communicate it immediately to his Court.

COUNT DE ROSTOPSHIN  
COUNT PANIN

His Excellency BARON DE STEDINGK.

### **Preliminary Convention between Denmark and Great Britain regarding the "Freya" Dispute, August 29, 1800<sup>1</sup>**

Their Danish and Britannic Majesties, equally animated by a desire to prevent by means of a preliminary friendly agreement the consequences that might result from the difference which has arisen between them as a result of the encounter which took place between the Danish frigate *Freya* and certain English war-ships, and to restore in full measure the relations of friendship and confidence which have so long united them, have to this end appointed and constituted as their plenipotentiaries: His Danish Majesty, Count Bernstorff, his Chamberlain and Secretary of State for Foreign Affairs; and His Britannic Majesty, Lord Whitworth, Knight of the Bath, who having communicated to each other their respective full powers have agreed upon the following articles:

#### **ARTICLE 1**

The question of right, with relation to the visiting of neutral vessels under convoy, shall be deferred to a subsequent discussion.

#### **ARTICLE 2**

The Danish frigate *Freya* and the vessels under its convoy shall be immediately released and the said frigate shall receive in the ports of

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 7, p. 149.

His Britannic Majesty all that it may require for repairs, according to the practice in vogue between friendly and allied Powers.

### ARTICLE 3

To prevent the renewal of disputes of the same nature as the result of similar encounters, His Danish Majesty shall suspend the sending of convoys until subsequent explanations on this same subject shall have resulted in a definitive convention.

### ARTICLE 4

If, however, encounters of this sort should occur before the instructions intended to prevent them can be put into operation, they shall have no serious consequences, and the settlement thereof shall be considered as being included in the matters covered by the present convention.

### ARTICLE 5

This convention shall be ratified within three weeks from the date on which it is signed, or sooner if possible.

In faith whereof, we the undersigned plenipotentiaries of Their Danish and Britannic Majesties, have signed in their names, and by virtue of our full powers, the present convention, and have hereto affixed the seal of our arms.

Done at Copenhagen, August 29, 1800.

[L. S.] C. BERNSTORFF

[L. S.] WHITWORTH

### **Decree of the Emperor of Russia regarding Sequestration of the Property of Englishmen, August 29, 1800<sup>1</sup>**

Pursuant to the orders of his Excellency Chevalier Pepow, Major General commanding at Riga, under date of August 28, the magistrates of this city announce that His Imperial Majesty, having been

<sup>1</sup>Translation. French text, *ibid.*, p. 153.

informed of the acts of violence which the English have committed against Denmark, and having learned that an English squadron has passed the Sound, an event which, by causing this passage to be closed, has seriously affected the entire commerce of the Baltic, has ordered that, as security against the damage that may result therefrom to Russian commerce, the real designs of the English being as yet unknown, all property belonging to Englishmen be sequestered; that the most rigorous measures be taken to prevent this property from being restored to them under any pretext and without the permission of His Imperial Majesty, without, however, confiscating it or molesting the English in their domestic commerce.

Published at the city hall of Riga, August 29, 1800.

*Ad mandatum.*

SCHWAZ

*Secretary in Chief*

**On the Subject of the Capture of Neutral Ships and of the Project of Confederacy supposed to exist in the North against Great Britain, September, 1800<sup>1</sup>**

It must have occurred to the observation of every man, and not without pain to every well-thinking person, that several of our daily papers, namely, mostly those in the interests of opposition, have exerted themselves, with more than ordinary malignity, to represent the subject before us in the worst colors; and that they have in this instance, as in every other in which they could flatter the enemies of their country, and misrepresent the acts of government, been faithful to that systematic rule of conduct, which their repeated defeats, and

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 169. "This article was published in the London papers so early as the 12th of September, 1800. It is attributed to the pen of a noble Lord, who has been for many years honored with the representation of His Majesty at the Court of one of the northern Powers engaged in the confederacy. It must be a matter of interest and curiosity to know what were the sentiments at that time of such an able statesman, possessing such an opportunity of information upon the subject; and therefore the editor has not hesitated to give the article, though not *authoritatively*, a place in this collection." *Ibid.* For a reply to this article, see *post*, p. 519.

the disappointment of their sinister hopes, by the vigor of administration, have suggested to their malevolence. But it shall be the object of these lines to undeceive the honest and sober portion of the people, who, unaware of the falsehoods daily propagated in those papers, have suffered themselves to be misled by the contemptible comments which have lately swelled their columns, in relation to the present subject, while I endeavor to show that it is to the rancor and jealousy entertained by some of the northern Courts, that of Denmark in particular, of the commercial prosperity of Great Britain, and not, as the hirelings of opposition would fain have us believe, to the arrogant, unjustifiable pretensions, or haughty deportment, of our own people towards the rest of the world, that we are to look for the source of the prevailing misunderstandings.

The system now apparently manifesting itself in the north is not new: one similar in its tendency disclosed itself towards the latter end of last war; and our differences with Holland, which country advanced the same unjustifiable pretensions, to a free and uninterrupted intercourse with the enemies of Great Britain, which it would appear Denmark now conceives the design of establishing, were brought to a crisis by the discovery of proceedings decidedly hostile on the part of that Republic, as may eventually prove to be the case with regard to Denmark, if the Government of that country avows or justifies the late hostile aggression, of which we have so much reason to complain. Indeed, during the whole of the present war, the conduct pursued by the subjects of that nation has been more than equivocal; the most marked partiality for our enemies has distinguished them in multitudes of instances; and it will not be improper for every Englishman to attend to the consequences which he may expect hereafter, if this semi-warfare, under the cloak of neutrality, is to be tolerated, in compliance with the murmurings of disaffection at home, the malicious insinuations of our external enemy, or the thirst of pelf of pretended friends.

It may first be asked, what is the nature of the present war? Each nation engaged in it will inform you, that it is a contest undertaken in defense of its just rights, dearest interests, and independence; and individuals must form their own judgment of its expediency and justice, from such facts and documents as have come to their knowledge respecting its origin and causes. An inquiry into the merits of a question so often and so ably discussed in Parliament, and latterly so



judiciously treated in the incomparable work of Mr. Herbert Marsh, who has immortalized his name, among fair and candid men, by this production, would be foreign to the present purpose: it is sufficient for us to know that war actually exists, that that war is waged, on our part singly, against the united maritime strength of the first naval Powers of Europe, and one of those Powers, in particular, the relentless rival of this country, and the most desperate and inveterate foe which, perhaps, a nation had ever to contend with; one which no sacrifice, short of the most abject concession, will satisfy, if she proves successful in the present conflict.

Does it not follow then of course, does not self-preservation inform us, that our whole object, all our most strenuous endeavors, should be to weaken and deprive that cruel enemy of the power of molesting us, and to employ with effect the means of defense which it has pleased God, in the largeness of his bounty to this nation, to place in our hands?

The ultimate object of a just and necessary war, such as ours is, is security at home, respect abroad; in a word, a safe and honorable peace: to attain it, we must exert our valor, skill, and vigilance, in that line of warfare where they are most conspicuous, and to which it seems nature has peculiarly adapted us, in conformity to the happy allotment made to us by Providence of an insular situation. To our exertions by sea, to our naval strength alone, therefore, are we to look for protection, and the preservation of our liberties and political existence as an independent nation. To our fleets, under the blessing of Providence, are we indebted for the advantages we enjoy; and it surely is no less a duty carefully to watch that our enemies receive no undue aid and assistance from nations denominating themselves friendly, than it is to defend ourselves from those enemies; or otherwise, while with our right arm we are repelling the open united assaults of France, Spain, and Holland, and spending blood and treasure in our cause, we shall have to protect ourselves with our left from the stiletto attacks and secret blows from beneath the neutral cloak of Denmark and Sweden. Indeed there would be a glaring absurdity, and an unpardonable supineness on the part of those who are intrusted with the management of our dearest concerns, if they were tamely to suffer such proceedings; and if the illicit practices of neutrals have been sometimes connived at, as being the isolated acts of certain individuals, unauthorized and unsupported by their superiors, it does not follow

that those practices are uniformly to be tolerated, or to pass unnoticed, especially when they assume the aspect of a hostile disregard of common usage and the law of nations, and appear to be countenanced by those very authorities whose duty it is to check and suppress them.

It may be necessary, for the information of some readers, to state what the practices alluded to may be, and I am happy to be able to do so, not only from personal observation, but upon high and respectable judicial authority. I shall take Denmark as the standard of the most unwarrantable proceedings ever ascribed to a nation in amity with His Majesty, and endeavor to show that the subjects of that Crown have, more than any other people known, indulged in unlawful speculation and the eager thirst of gold, at the expense of other States, to the great annoyance especially of Great Britain, and the unspeakable advantages of her numerous enemies.

It may be necessary here to show in what manner the Danes have succeeded in covering the property of the enemy to the extent they have done, as assertions, unsubstantiated by facts, may be met by assertions equally plausible, or equally unsatisfactory to the reader.

It will not be denied that the enemies of England in general, and especially the Dutch, whose ships and property have been blocked up in the harbors of Surinam, and elsewhere in the West Indies and America, by the British cruisers, have called out to other maritime nations to come and assist them to carry home their colonial produce; nor will it be denied, that, as almost all the inland trade of Holland is carried on by commission, so their external navigation is carried on by seamen who are the natives of the northern parts of Europe, whilst their own people are employed in the canals and trackschuyts. The masters of most Dutch ships are Danes, and nothing certainly could be more obvious than the policy of covering Dutch property by fraudulent intervention and false transfers to Danish subjects; and, from the extent and continuance of these practices, it would indeed almost appear, that the payment of duties into the Danish treasury was as irresistible for the Danish Government, as it was found impossible for the Danish merchant to withstand the monopolizing of the trade and navigation of Holland. Thus things have gone to great length; pretended sales, *pro forma*, have been made by Dutch proprietors to Danes, and other neutral subjects, in the ports of Surinam and the Dutch colonies abroad, and at Amsterdam and other ports of Europe.

At these sales the proper parties were not always present themselves,

the equivalent consideration was not paid down, and the transaction was neither before proper magistrates on oath, nor had the true forms of notarial jurisdiction. Crews were actually sent from Copenhagen, Altona, and elsewhere, to Surinam, etc. The Dutch Governor himself is absolutely said to have hoisted the Danish flag; and *entremetteurs*, or middlemen, agents, and brokers, charged, in their correspondence and papers, so much for commission for what they called *neutralisation*. Royal sea passes were obtained at Copenhagen as for ships belonging to Denmark, and for persons as Danish inhabitants, which ships had never been in the ports of Denmark, and which persons had passed the greatest part of their lives in foreign countries, under foreign protection. The very bills of admeasurement were made only with the curious clause of *ad interim*, viz., to be valid only until such time as they should come to Denmark. It must be further observed, that the purchases made in the colonies of the enemy, particularly by the Danes, were attended by a mode of proceeding as equivocal, as it tended strongly to conceal his property. Persons, in the character of Danes, were sent from Europe to buy up West India produce: for these cargoes bills were drawn for the payment, upon condition of the ship and cargo's safe arrival, and that the person on whom the bills were drawn should have the commission: thus, in case the ship was captured, and never arrived, there was no actual payment fairly out and out, and no loss to the Dane. There was another practice, that of drawing and redrawing; as when the Dane has been drawn upon, and paid the pretended price for the goods, he draws again upon the Dutch merchant, in whom all property begins and ends. How then were such difficulties to be got over in our courts? How was it possible to discover the ultimate? For if the parties had no conscience in falsifying oaths, proofs, and papers, little could be done towards discovering the truth, and checking an intercourse so opposite to every thing that is to be hoped for by this country in a naval war. Besides, even on the supposition of neutrals having a right to buy and sell in the enemies colonies, and of its being only required of them to prove that there was a *bona fide* purchase in open market, out and out, for a fair equivalent actually paid, still so much fraud, of the kind above related, appeared openly in the Court of Admiralty, that the decisions could not be different from what they were; for, notwithstanding the clamors raised by the Danes, every neutral subject must be conscious that, as such a trade must be attended with peculiar suspicions, it was

incumbent on each of them to produce more exact documents ; and as their profits were immense on the general scale, so individuals ought the more patiently to have abided the consequences of seizure and investigation. It is scarcely necessary to add, that these doubts and suspicions were increased, in proportion to the facility with which it was known that briefs of burghership, constituting the holder a Danish citizen, and giving him all the privileges and advantages of a Danish subject in matters of trade, were sold in every town in Denmark to the first comer, whether a Cherokee Indian or a Mandingo Negro ; and that Englishmen as well as Dutchmen were frequently, under a similar metamorphose, enabled to hold a direct intercourse with all the enemies' ports abroad, to display the Danish flag, and exhibit Danish papers ; though, in the case of the former, this intercourse was not only unlawful, but even criminal, upon the ground of express law to that effect, in time of war, and upon the principle of no Englishman, or other British subject, having a right, at any time, to claim the protection of a foreign Power in any transaction, whether commercial or other, that is injurious to the interests of his lawful sovereign. Consular certificates, declarations, and interventions, by which the neutral subject sought to protect his vessel from the search of such consular agent's own countrymen at sea, and to legalize his cargo by the seeming acknowledgment of its lawful character by the enemies of Great Britain, was another instrument of deception in the hands of the neutralist, and a new system introduced by the politics of France, contrary to the ancient established laws of nations, which no judge in admiralty causes could ever submit to. But in adducing the multiplied instances of the practices pursued in regard to the West India settlements of our enemies, it is not to be understood that the speculations of the Danes were confined to that quarter of the world only ; the east as well as the west, the Mediterranean as well as the ocean, all equally afforded the fairest opportunities for similar abuses ; and the great settlement of Batavia, in particular, has been preserved to Holland by the fraudulent intervention of Danish subjects alone, while the whole trade of the Mauritius passed through their hands, under the same fictitious form with that of the Dutch and French West India Islands, although the whole capital of Denmark would scarcely have sufficed to bring one of those branches of commerce fairly, out and out, into their own hands. In Europe, the ports of Carthagera, Cadiz, Ferrol, the ports of Toulon, L'Orient, Brest, and Rochefort, received their naval stores from the

hands of neutrals, and the Danish flag is everywhere conspicuous, where the enemies of England stand in need of supplies of this or any other description, whether lawful or unlawful. But it will happen with this flag, at the close of the present war, in increased proportion as it did with the same flag at the end of the last, when, to quote a single example only, out of eighty vessels which sailed the seas in the name of one great mercantile house of Copenhagen, under Danish colors, there was not one but what assumed its native Dutch character at the pacification, and acknowledged its real proprietor by returning to the ports of Holland. The metamorphose of the French, Dutch, and Spaniards, into Danes, will be still more striking at the close of the present war: at the signing of a peace, the scanty flag of Denmark will resume its proper place, and convey a juster idea of its original insignificance than may be now entertained of it by such as are ignorant of these things. But enough has been said to prove the necessity of the strictest watchfulness on our part; and where is the man who conscientiously can justify such proceedings? Where is the Englishman, who has the interest of his country at heart, that would submit his fair and impartial judgment of these matters, and his right of self-preservation, to false notions of justice, to those who would so cruelly impose on his good faith, and who have so bare-facedly trespassed on his borders, and trampled his best fences under foot, while they professed their friendship for him, and declared themselves neuter in the quarrel between him and his enemies? But, above all, where is the Englishman who, though with native humanity and characteristic benevolence he might be disposed to spare the individual who injured him, would tamely submit to the same encroachments, if he discovered a really hostile design in a nation at large, and the intention, openly manifested, of opposing, by acts of violence and force, the lawful exercise of his just prerogative? The late circumstance of a Danish ship of war resisting by arms the usual visit to which neutral merchantmen are liable on the part of every belligerent Power, is one which no existing treaty, no law of nations, no usage ancient or modern, can justify or countenance; it was a direct infraction of the neutrality of Denmark, by one of her own commanders; a most unwarrantable opposition to the lawful exercise of the duty imposed on the British officers, and a wanton violation of a right inherent in every belligerent Power, and naturally arising from a state of war; a right which our great active rival even did not dispute, in a case which

occurred in the East Indies in the course of Lord Cornwallis's memorable war with the late Tippoo Sultaun; a right, in short, in many instances sanctioned and acknowledged by treaty, with provision only against arbitrary and vexatious detention, where papers and other documents appeared unobjectionable. But in regard to warlike stores, more specific arrangements still have been reciprocally agreed on between the States; and, in many cases, which a reference to our public treaties would discover to the reader's satisfaction, each individual article constituting such stores is named and declared contraband by mutual consent, and proper forms of sea passes for their respective subjects formally stipulated. With what conscience, then, can it be pretended, that the escort of a ship of war, of a nation not a party in the contest, should screen the neutral merchantman from the inspection of his papers, or the stricter search of a belligerent Power, whose only hope of a successful issue is on the assurance of the enemy's receiving no undue succor or advantage from nations professing neutrality and friendship? If protection of this kind is lawful in one instance, it must be equally so in a thousand, and the right of visiting must cease. The admission of so preposterous a pretension would shortly put an end to everything; and we had much better accede at once to the principle which French policy would fain prescribe, but which British sagacity contemptuously rejects, of suffering neutral bottoms to constitute neutral property, and thus deliver up commerce and navy, at a stroke, to the mercy of our foes.

There are men, who, unacquainted with Denmark's means of attack and defense, may form such erroneous conjectures on that subject, as the malice of the disaffected would suggest to them; and there are others, who, better acquainted with the relative powers of that country, may stand appalled at the bugbear of the northern confederacy, and their frightened fancy exhibit to their view the fleets of Denmark, Sweden, and Russia, combining their operations at sea with those of a Prussian army by land, and changing the face of the globe. But let us take a more impartial view of things, and we shall soon perceive that such fears are imaginary only, and that people shrink more from the sound, than they would do from the reality of this war, if, indeed, such a war should be in contemplation with those States, which is extremely problematical. It must, in truth, be acknowledged, that there is something very extraordinary in the conduct of the Court more immediately in question; and the circumstance of two ships, belonging

to that State, acting in a manner so exactly corresponding, though in different seas, would seem to corroborate the idea of the existence of a secret understanding between her and other maritime Powers of the north, as it is hardly to be supposed, that, without some such concert, she would have adopted so desperate a measure as to hazard singly a contest with this country; but still this is doubtful, and it may be only an experiment made on the temper of the British Cabinet, which the resolute firmness of this Cabinet will induce that Court to abandon with as much haste, perhaps, as it undertook it. But in order to be prepared for every contingency, let us suppose the existence of this confederacy, and let us review the forces of our new antagonists in hostile array, while we examine the consequences to them and to ourselves, of so unjust a league, so incoherent, so preposterous, so unnatural a state of things.

We see Denmark with thirty-three sail of the line in the harbor of Copenhagen, her only naval arsenal, with two or three others on the stocks, and from twelve to fifteen frigates and other smaller vessels; two, at most, of these ships, carrying upwards of seventy-four guns—some that number, but the greater part only sixty-four. Of the number of ships of the line, eight at least are wholly unfit for service, and if five-and-twenty could be equipped, it is the utmost; but it could never happen that they could all be properly manned at the same time; and if it were possible, it is extremely improbable that the whole fleet would be risked, at once, to the hazard of an action, even with an enemy of inferior force. Ten or twelve ships, therefore, is the utmost number that would ever quit the Baltic; the rest would be reserved to replace, occasionally, such of them as wanted refitting, after service or accidents at sea, and as guard-ships for the protection of their coasts, and the harbors of Norway in particular, where there exists a spirit not altogether friendly to the Government of Denmark, and a brave people, the enthusiastic admirers of the naval valor and prowess of Britain, as well as of her invaluable constitution. The Danish squadron, once at sea, would naturally seek the ports of Holland; it might also hope to evade the vigilance of our fleet, and escape into those ports; but another Duncan would soon appear to paralyze its future operations. The manning of this squadron, however, must first be effected, before it undertakes any sort of operations; and unless the Danish Government has been silently pursuing measures, in order to secure so requisite a preliminary to war, this object would extremely

perplex that Government in the outset. The Danish, as well as Norwegian sailors, fishermen, and other seafaring people, along the coasts of those kingdoms, are all enrolled, and obliged, by law, to serve on board His Danish Majesty's fleet, whenever a proper notice is delivered to them to repair to their allotted stations; and, indeed, by this mode, a respectable squadron, fifteen sail of the line perhaps, might be soon manned, provided the event had been foreseen, and those men could be found unemployed at their respective homes; but this can hardly be supposed to be the case at present:—those men's livelihoods being procured by their industry and various maritime vocations, it rarely happens that a third of their number is to be met with on the spur of the occasion; besides, it is well known, that, as in that country, of late years, every wise and prudent consideration has yielded to the desire of accumulating wealth—the boon held out to the Danish mariners of becoming the carriers of the world, afforded too promising a prospect of general profit, to admit of those permits being withheld from them by the Government, which, by law, it is authorized to grant to such as are desirous of serving abroad, or of absenting themselves on distant voyages. Thus, on an emergency, at this season of the year, it would prove extremely difficult to man five ships of the line, and an equal number of frigates; and if the summer months are lost, the campaign becomes hopeless for a nation, with which the elements, and the ice in particular, are at variance for the remaining portion of the year.

From this view of the naval power of Denmark, it will not be contended, that much is to be apprehended by this country from that quarter; nor will it be thought, upon an inquiry into that of Sweden, that the accession of that country should much alarm us. The diminished fleet of Sweden, reduced, since the last war with Russia, to twenty sail of the line, would unwillingly risk its reputation beyond the Sound; and though a division of four or five ships might join the Danes in the North Sea, the remainder would be satisfied with a summer cruise in the Baltic or Cattegat, and be wanted to protect Gothenburg, as well as Copenhagen, and the other trading towns. The manning of the Swedish fleet would be attended with still greater difficulties than even that of Denmark; and the expenses of a war, and the present shattered state of the finances of that country, would be more severely felt, and more reluctantly submitted to, than in the former, where public credit is on a better footing, and the treasury



more judiciously administered; yet even there the most serious consequences might be apprehended from any great additional taxes or burdens on a people naturally selfish, and not enjoying the inestimable privilege of assessing themselves.

With respect to Russia, her navy is more respectable than the two former put together; sixty sail of the line, with a proportionable number of smaller ships, are said to compose her marine: but in the present state of uncertainty, which prevails in regard to the real designs of that Court, it would be misplaced to name His Imperial Majesty, the Emperor Paul, otherwise than with profound deference, and just admiration of the noble deeds achieved by his arms, during the time he favored the common cause; and little more shall, accordingly, be said here, on the part that monarch may be supposed to take, in the so much rumored concert of the north, than merely, that a naval war might possibly not be attended with the same brilliant successes which signalized His Imperial Majesty's arms by land, as his ships are neither calculated for very severe service in distant seas, nor his mariners very numerous, or likely to be much disposed to enter with ardor into a war with that ally, of whose irresistible valor and dexterity on his native element, they have had so many opportunities of receiving the most evincing proofs; such proofs, as might make even the brave and hardy Russian pause, ere he entered the lists of his opponents.

Of Prussia, as merely a military Power, little need be said, although that country, notwithstanding, possesses the means of materially injuring our trade, by the power and influence she enjoys over Hamburg, and other ports in Germany, from which she might entirely exclude us, if she could find any compensation in that measure, for the more essential injury the commerce of Germany in general, and of her own fine province in Silesia, so noted for its linen manufactories, in particular, would experience from being cut off from all exportation by sea.

This hasty sketch of the power and maritime strength of the projected alliance against this country (if, indeed, it be true that the dictates of malevolence, and the basest passions, should have overcome the suggestions of sound policy, which must ever militate against the formation of such an alliance), will suffice to convince us, that the whole northern marine, united with that of the rest of Europe, is insufficient to cope, successfully, with the triumphant fleets of Great Britain; and it may now be well to state what the consequences of such combination might be, as well to our new enemies as ourselves.

The trade of the Baltic, and even to Germany, would be, at once, cut off from this country, and the momentary inconvenience would be severely felt, though it could not be productive of any very serious mischiefs, as such a state of things could not be durable. We should receive no naval supplies from the Baltic; and all stores of that kind would rise to an enormous price in every part of His Majesty's dominions. Government having a title to preemption, would of course provide against the wants of the navy; but commercial navigation would experience considerable distress. On the other hand, the enormous sums of money which are annually remitted to the States of the Baltic, for those articles, would remain at home, or be fully employed in setting hands to work in every other corner of the globe, from whence the same commodities could possibly be procured. We should, indeed, have to send further for them, but we should in the end obtain them; and the Baltic States, perceiving the fatal consequences to themselves of such a diversion of their branches of trade, would not be tempted to pursue the same blind and rugged path of policy to its conclusion—their own eventual ruin.

If those supplies were cut off from us, we should take care that they were equally so from the rest of Europe; and the general stagnation which would follow, would become insupportable to the northern Powers, as the article of naval stores is the only valuable return they have to make for their own supply of many of the necessities and all the luxuries of life from other countries. It is, besides, particularly with this country, that theirs is a gaining trade; with most other nations it is a losing one. They take little from us, in comparison with what we receive from them; and the large returns we are obliged to make them in specie are the life and soul of all their other commerce. Besides, what is it that British industry might not accomplish? Should we tamely sit down under our privations, and thus acknowledge our dependence on those nations for the essential requisites towards maintaining that marine which is the pride and glory, as well as the support of Great Britain; the envy and admiration, as well as the dread of every hostile Power? Certainly not. Why should not the noble fir-woods of Scotland, though inland and of difficult access, be rendered serviceable by British perseverance, and yield masts to ships of English oak, as well as turpentine? And how would Norway brook the loss of those chief sources of her commerce? What would be said in Sweden, if British iron was found sufficient, and if, with

patriotic spirit, all ornamental work in this article were to cease in England, in order to supply our dock-yards and naval arsenals with the requisite quantity? What would be said there, if tar, pitch, etc., were to be imported in greater quantities from America? And would not the dealers in hemp, flax, and coarse linens, in the Prussian and Russian provinces, look confounded, on perceiving that the exigency of the case had driven the bold and enterprising genius of British traders to the search of the same commodities, not only from the well-known sources of industry, in this species of merchandise, in Scotland and Ireland, but from Barbary, America, and Levant, and elsewhere? Can the occasional supplies of wheat, and other grain, we receive from Denmark, tempt us to forego the precious right she has rashly ventured to dispute with us; and would not legislative provision for the extension and improvement of agriculture at home soon render us independent of her for this necessary of life? As for the trifling articles, which her jealousy of our superior workmanship and excellent materials in manufacture allows her to take of us, and of which more is smuggled than lawfully imported by her own people, they are too trifling to deserve mentioning among our losses in trade by war.

With regard to Hamburg, indeed, and the use of the rivers Elbe and Weser, the kings of Prussia and Denmark might, as was before hinted, materially injure us, by depriving us of these only remaining channels of commercial intercourse with Germany and the northern continent of Europe: but all communication with the ocean would likewise be shut to them; and it is not to be believed that the Elector of Saxony, or other pacific States, would silently acquiesce in so violent a measure, and the consequent suspension of all exportation of their superfluities by sea.

The first immediate consequence of our naval operations would be, the total suspension of the Sound duties, into the Danish treasury; and it need only be said that £160,000 sterling are annually received under that head, to show that it is a most important item of revenue to the State, and one which Denmark would as reluctantly part with, as it could little spare, from the civil list, or immediate expenditure of the royal household, to which it is principally appropriated. Scarcely a ship would venture through those straits; and the British cruisers may, in case of war with Denmark, more effectually deprive the Dutch and French of their supplies from the Baltic than they do even at this

moment. We should deprive the Dutch of the inestimable advantage they derive from the use of the canal of Kiel, in Holstein, through which their small craft and coasting vessels, passing from the Baltic into the river Eyder, and so on into the German Ocean, now supply their wants, as well as those of France, without danger of interruption from our ships of war, which, drawing more water, are unable to pursue them through the shoals and narrows to which those people immediately betake themselves; but once at liberty to act hostilely against Denmark, nothing could hinder Great Britain from possessing herself of the island of Heligoland at the entrance of the Elbe, and from thence annoying with light vessels the Dutch coasting trade, as it issued from the Eyder, at the same time that they blocked up the narrow passes at the mouths of the Elbe and Weser, leading to North Holland. Copenhagen and Altona, from their position and military strength; the seaports of Holstein and of Norway, from their little importance to us, might remain unmolested; but Tranquebar, Fredericksnagore, in the East, Saint Croix and Saint Thomas, in the West Indies, would fall an easy prey, and with them all the hopes of Denmark of commercial grandeur and prosperity, to the utter confusion and trepidation of the whole nation, which attaches the utmost consequence to the possession of those settlements.

**Letter of the Spanish Secretary of State to the Swedish Minister  
regarding British Violations of the Swedish Flag, September  
17, 1800<sup>1</sup>**

SIR: The King my master has learned with the greatest indignation, from a report which the Consul of His Swedish Majesty at Barcelona has sent to the Captain General of Catalonia, containing the declaration of Captain Rudhardt, of the Swedish galiot *Hoffnung*, that on the afternoon of September 4, last, two English vessels and a frigate forced the said captain, after having examined his papers and found them to be all right, to take on board English officers and a considerable number of sailors and to permit his vessel at nightfall to be towed

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 7, p. 157. A copy of this letter was handed to each member of the diplomatic corps at Madrid.

by several English boats to the roadstead of Barcelona and under the guns of its batteries.

That the English, having reduced the said captain and his crew to silence, by pointing a pistol at his breast, took possession of the helm, and at nine o'clock that night, by means of the said vessel and the boats surrounding it, made an attack on two frigates under the Spanish flag, which were at anchor. The latter, having no reason to suspect that this friendly and neutral vessel concealed enemies on board and thus served for an attack of the most treacherous nature, were in a manner surprised and forced to surrender.

For further details and the acts of violence committed by the English on the Swedish vessel, we would refer you to the captain's declaration, which is transmitted herewith.

The King my master can not but consider this incident as affecting the rights and injuring the interests of all the Powers of Europe, including those of England, and above all as a very serious insult to the flag of His Swedish Majesty.

Indeed, it is evident that, in admitting neutral vessels to their roadsteads and ports, the belligerent Powers desire to mitigate the scourge of war and to facilitate the commercial relations between peoples, which their mutual needs demand.

Therefore, whatever tends to render such navigation suspect and dangerous prejudices the rights and interests of all nations alike.

In the present case, the rights and honor of the Swedish flag have been violated in so outrageous a manner that few such examples can be found in the maritime history of Europe.

If the attack were left unpunished, it would tend to embroil two friendly nations, to paralyze their commercial relations, and to cause the nation that tolerated the insult to be considered as a secret auxiliary of the enemy Power, thus forcing Spain to adopt such measures as the interest of its vessels and the safety of its ports might require.

However, the King my master can not but feel that the Swedish captain was not guilty of the slightest connivance with the English, and that all that he did was to yield to their acts of violence and overpowering numbers.

Under this supposition, the King has commanded me to bring to the knowledge of His Swedish Majesty this grave insult to his flag; and having no doubt as to the latter's resentment at so base and lawless a proceeding on the part of certain officers of the British navy, he ex-

pects the Court of Stockholm to request the English Ministry most urgently to see to it that the officers guilty of the acts in question are punished with the utmost severity, and that the two Spanish frigates which were surprised and removed from the roadstead of Barcelona by a ruse contrary to the law of nations and to the rules of war, are immediately restored, together with their cargoes, as having been illegally taken by means of a neutral vessel, which served as an instrument for the assailants.

His Catholic Majesty is the more confident in his belief that the success of this demand is assured, since the English Government itself can not be blind to the fact that its enemies, by following such an example, might likewise make use of neutral ships to infest its roadsteads and to perpetrate in its ports all the damage possible.

But if, contrary to his expectation, the steps taken by His Swedish Majesty at the Court of London to obtain reparation for the insult to its flag, as well as the restitution of the two Spanish frigates, should not meet with the success desired before the end of the year, His Majesty would consider himself obliged, although with the greatest regret, to adopt measures with respect to the Swedish flag which would protect its roadsteads and ports from so dangerous and revolting an outrage as that just committed by the English.

I have the honor to be, etc.

CHEVALIER D'URQUIJO

ST. ILDEPHONSO, *September 17, 1800.*

**Note of the Swedish Chancellor to the Spanish Secretary of State, October 22, 1800, in reply to His Letter regarding British Violations of the Swedish Flag<sup>1</sup>**

His Swedish Majesty has learned with the greatest displeasure of the act of violence which certain officers of the English navy com-

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 7, p. 159.

mitted on a merchant ship of Swedish Pomerania, for the purpose of using it in a hostile undertaking against two frigates in the roadstead of Barcelona. Being in complete accord with His Catholic Majesty in his views upon this new abuse of force and the common danger which such examples may lead to, with respect not only to neutrals but to the belligerents themselves, His Majesty, both because of his friendly relations with the Court of Spain and the neutrality of his flag, will see that the grievance is brought before the Court of London.

In these demands, which involve principally the rights of the flag and subjects of Sweden, His Catholic Majesty will no doubt consider it just for the King to regard himself as the principal party. In pursuing his own interests, as His Majesty understands them, he will certainly not overlook the interests of Spain. Justice requires the restitution of what has been wrongfully taken: His Majesty shall insist upon that, though he can not guarantee the success of his efforts. He will, in due time, communicate confidentially to the Court of Spain the stand that the English Government may take in the matter; but a just confidence on the part of His Catholic Majesty will undoubtedly leave to the judgment of His Swedish Majesty the form and method to be followed in this business, without requiring that it be accomplished at any fixed time or that a report thereof be rendered. Spain, which, like the rest of Europe, is aware of the lengthy negotiations which Sweden has been carrying on at London with regard to the restitution of its vessels, can have no reason to expect speedier justice in a cause where the restitution is to be made to an enemy.

In general His Swedish Majesty does not admit any responsibility on his part for an act, the cause of which does not concern him. After the reports on the affair which the Court of Spain has had made and in view of the circumstances which that Court itself admits as having been determined, that it should attempt to implicate the Government of Sweden and this entire nation was certainly not to be expected.

It would be unfortunate if the wrongdoing of a third party should cause a rupture of the good relations which a number of direct discussions during the present war have been unable to alter. There have been frequent unfortunate occurrences, especially, it would appear, in Spanish ports: a Swedish ship taken in the very port itself—an intervening one—by the English; another vessel pillaged and completely destroyed by the French at Alicante; several others seized by French privateers stationed at the entrance to the port of Malaga, have given

His Swedish Majesty many occasions to suggest and demand in a friendly way, with a view to the security of his commerce, that the Court of Spain see that its territory is respected. His Majesty would have congratulated himself on the outcome of his representations, if he had observed in his favor any indication of the energy which the Government of Spain has recently displayed against him in a matter, in which he himself has nothing but grievances. Nevertheless the apparent uselessness of his demands has not caused His Majesty to depart from the tone of moderation and equity, which becomes the intercourse of two friendly Courts and to which His Majesty still hopes to see the Court of Spain return, after the various unfortunate occurrences in its ports.

The undersigned, Chancellor of the Court, who has the honor to transmit these views to Chevalier Huerta, Envoy Extraordinary of His Catholic Majesty, in reply to his communication of September 17, takes advantage of this occasion, etc.

F. VON EHRENHEIM

DROTTNINGHOLM, *October 22, 1800.*

**Letter of the Chancellor of Sweden to the Minister of Prussia concerning British Violations of the Swedish Flag, November, 1800<sup>1</sup>**

Having informed the King of the interest taken by His Prussian Majesty in the demand of the Court of Spain concerning the abuse of the Swedish flag by the English, the undersigned, Chancellor of the Court, has been charged to express to Mr. de Tarrach the gratitude of His Majesty for the constant solicitude of the Court of Berlin with respect to the interests of neutral flags and His Majesty's entire confidence in that Court's point of view. The King was very much surprised at the way in which the Court of Spain publicly called Sweden to account on this occasion and at the threats which accompanied its communication. After all the vexations to which neutral flags have been exposed during the present war, this is the most oppressive

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 7, p. 162.



measure which they have had to endure. In this way, placed constantly between offense and reparation, they must soon allow themselves to be drawn into the war or disappear from all the seas where war is being waged.

These truths being of such moment both for Sweden and for the other neutral Powers, His Swedish Majesty could not assume, in general, any responsibility for the abusive use by belligerent Powers of the Swedish vessels of which they may take possession. This principle seems to His Majesty to be so well founded that he flatters himself with the belief that the Court of Berlin will give him all the support which justice and common interests would seem to require. It has been generally recognized up to the present time, amidst the many acts of violence which have been committed on both sides; otherwise the war would have been general. If the Ottoman Porte, Russia, and England had placed such responsibility upon all the flags that they found at Alexandria; if they had demanded Egypt back again from the respective Governments, because merchant ships had been compelled to transport French troops to take it by surprise; if they had put forward demands and conditions in this peremptory form, all commerce and all neutrality would have been destroyed. Therefore His Majesty considered that the act of violence against the Swedish flag at Barcelona could not be treated otherwise than the acts of which he has had occasion to complain previously; and he has reserved the right to take up the wrongs done his subjects or his flag at such time and in such a way as his peculiar position may permit.

His Majesty must not, however, conceal the fact that in the present case the injury that has been done to a friendly Power causes him the more regret because he considers the English capture as absolutely illegal and greatly desires to succeed, through his representations, in obtaining restitution. His Majesty will certainly leave no stone unturned in his endeavor to bring about an arrangement, on which rests, quite unexpectedly, the continuance of friendly relations between Sweden and Spain; but he can not do at present for the two frigates what he has not hitherto done for his own convoys, nor hold up brighter hopes to Spain than to himself.

The undersigned takes advantage of this opportunity to, etc.

VON EHRENHEIM

**Extract from the Gazette of the Court of St. Petersburg regarding an Embargo on British Vessels in Ports of the Island of Malta, November 7, 1800<sup>1</sup>**

We have been informed that the Island of Malta, which up to the present time has been in the hands of the French, has surrendered to English troops. It is not yet known, however, whether the regulation on this subject, dated December 30, 1798, has been complied with; namely, that upon the capture of this island it should be restored to the Order of St. John of Jerusalem, of which the Emperor of all the Russias is Grand Master. Consequently, it has pleased His Imperial Majesty, for the purpose of maintaining his rights, to order that in all the ports of his empire an embargo shall be placed on the English vessels therein, until this convention shall have been fulfilled.

**First Note of Lord Carysfort, British Minister at Berlin, to Count Haugwitz, Prussian Minister of State, regarding the Occupation of Cuxhaven by Prussian Troops<sup>2</sup>**

*BERLIN, November 16, 1800.*

The instant Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, learned that His Prussian Majesty was preparing to order a detachment of his troops to enter Cuxhaven, and that the reason which the public thought proper to assign for that measure, was the refusal given by the Government of Hamburg, to cause a vessel to be released, which, taken by one of the ships of war of His Britannic Majesty, had been compelled, in order to avoid the dangers of the sea, to enter that port, he thought it his duty to demand an audience of his Excellency Count Haugwitz, Minister of State and of the Cabinet, for the purpose of obtaining information with respect to that affair.

He received from his Excellency the assurance that the intentions of His Prussian Majesty were in no view hostile or contrary to the interests of Great Britain; but that the occupation of Cuxhaven had for its principal object the maintenance of the authority of His Prussian Majesty, in his character of chief and protector of the neutrality

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 7, p. 155.

<sup>2</sup>*Collection of State Papers*, vol 11, p. 198.

of the north of Germany, and that it was conducted with the consent of the city of Hamburg itself.

Lord Carysfort not being exactly acquainted with the circumstances under which the vessel in question found itself, deferred to another occasion, the observations which he might have wished to submit to his Excellency. He has now grounds to believe, that, laden with contraband goods, it was captured by one of His Britannic Majesty's ships as it was entering into the Texel; that is to say, into a port belonging to the enemies of His Majesty; and that it was restored as soon as the officer who had the charge of it could be informed of the orders of his superiors.

With respect to the occupation of the town of Cuxhaven by the Prussian troops, which must have been founded on particular conventions between His Prussian Majesty and the Senate of Hamburg, he does not think himself called upon to take part in that discussion; but he feels himself authorized to claim, in favor of the subjects and vessels of the King his master, all the rights to which they have a just pretension in a neutral port belonging to a republic, whose connections with the States of His Majesty are very ancient, and generally known; no convention made between the city of Hamburg and His Prussian Majesty being capable of invalidating or altering his rights.

In consequence of these considerations he dares hope that His Prussian Majesty may still suspend the occupation of Cuxhaven, until the two Courts shall have the means of entering into mutual explanations, more particularly since such occupation, in the actual circumstances, might give room to ill-disposed minds to attribute to His Prussian Majesty views not less opposite to the sentiments of justice and moderation which govern all his measures, than to the friendship and the good harmony which subsist between him and His Britannic Majesty.

At all events, it will not escape the wisdom and humanity of His Majesty, that the entrance of a numerous corps of troops into a village both poor and with a small extent of territory, would probably augment the misery of the inhabitants; and that the city of Hamburg having always possessed that place, so indispensably necessary to the preservation of the navigation of the Elbe, all which may trouble that possession, derange ancient customs, and influence the pilots there at present to seek a refuge elsewhere, would strike a sensible blow at the commerce of all the countries of the north of Germany, and even at that of the States of His Prussian Majesty.

CARYSFORT

**Second Note of Lord Carysfort to Count Haugwitz regarding the  
Occupation of Cuxhaven by Prussian Troops<sup>1</sup>**

*BERLIN, November 18, 1800.*

The undersigned, Extraordinary Envoy and Minister Plenipotentiary of His Britannic Majesty, thinks himself obliged again to address himself to his Excellency Count Haugwitz, relative to the intention of His Prussian Majesty, in taking military possession of Cuxhaven. When the undersigned had the honor of transmitting to his Excellency the verbal note of the 16th, it was not exactly known "that the Prussian vessel brought into that port had been restored." The fact being now certain, as well as the zeal manifested by the Senate of Hamburg to fulfil the wishes of the King, the surprise and consternation excited from the moment when the orders for marching a detachment of troops were known, would be raised to their utmost height, if it were ascertained, that, notwithstanding the complete satisfaction given to His Prussian Majesty on all the points respecting which he thought proper to complain, he should not appear less attached to his determination of causing Cuxhaven to be occupied by his troops. In fact, it appears at first sight that this occupation would be so calculated to give the most serious alarms to all commercial nations, that, without alluding to the interpretations which calumny might be desirous of giving to the measure, strong hopes are entertained from the justice and moderation of His Prussian Majesty, for that reason only, that he will not come to the resolution of carrying it into effect.

The undersigned would not, however, think he had executed his duty, should he neglect to represent to his Excellency the lively alarms which necessarily result from the uncertainty in which the affair remains. The reiterated assurances which the undersigned has received from his Excellency of the friendship and good wishes of His Prussian Majesty towards the King of Great Britain, do not allow him to believe that any misunderstanding can arise between the two Courts; but he can not avoid thinking that the enemies of humanity and public tranquillity will endeavor to turn to their purposes the alarm which is generally diffused, in order to scatter discord among the Powers, which will all unite and maintain the safety and independence of Europe at large.

CARYSFORT

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 199.

**Order of the Emperor of Russia relative to the Embargo on English Vessels, November 18, 1800<sup>1</sup>**

The crews of two English vessels in the port of Narva having, at the approach of the military force instructed to arrest them, in conformity with the decreed embargo, resisted, fired their pistols, and sunk a Russian vessel, and thereupon having weighed anchor and taken flight, His Imperial Majesty has seen fit to order the burning of a vessel which had remained in that port.

ST. PETERSBURG, *November 21.*

As a result of information received from Palermo, with regard to the part played in the taking of Malta by Italinskoi the present Chamberlain, it has pleased the Emperor to have delivered to the members of the diplomatic corps residing at his Court a note, signed by the Presiding Minister of the Department of Foreign Affairs, Count Rostopsin and by the Vice Chancellor, Count Panin, of the following tenor:

His Majesty the Emperor of all the Russias has received detailed information concerning the surrender of Malta, confirming the report that, in spite of repeated representations, both on the part of his Minister at Palermo and of the Ministry of His Sicilian Majesty, the English commanders have taken possession of Valetta and the Island of Malta in the name of His Majesty the King of Great Britain, and that they have raised their flag there to the exclusion of all others. His Majesty, justly irritated by such a violation of good faith, has therefore resolved not to raise the embargo placed upon English vessels in the ports of Russia until the stipulations of the convention concluded in 1798 have been fully complied with.

**Reply of Count Haugwitz to Lord Carysfort, November 20. 1800<sup>2</sup>**

The undersigned, Minister of State and of the Cabinet, is authorized by the orders of the King to completely tranquillize the anxieties

<sup>1</sup>From the Court Gazette. Translation. French text, Martens, *Recueil*, 2d ed., vol. 7, p. 155.

<sup>2</sup>*Collection of State Papers*, vol. 11, p. 200.

and apprehensions which my Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, expressed to him in his two notes of the 16th and 18th of November. The Prussian vessel, the *Triton*, has, it is true, been restored to its owner; but the mode of release was in every respect as irregular as the proceedings which had previously taken place with respect to it; and after an examination of all the circumstances relative to the incident which forms the subject of complaint, there appears throughout the whole a manifest infraction of the principles of the neutrality of the north of Germany. It is this superior consideration, added to the unjust refusal of the magistracy of Hamburg, which dictated to the King the resolution of causing a body of his troops to occupy the port of Cuxhaven, and the bailiwick of Ritzebüttel. This measure was executed the moment it was determined upon, and it is no longer capable of being revoked, the example of what has taken place, imposing on His Majesty the necessity of effectually watching over the maintenance of that neutrality which he has guaranteed to his coestates. The King can not imagine that His Britannic Majesty, after participating, in his character of Elector of Hanover, in the advantages and benefits of this happy neutrality, can conceive the smallest alarm at seeing a Prussian garrison enter into the port which England has fixed on as her point of communication with the north of Germany. Being thus placed under the immediate guarantee of the King, it will be the more effectually put out of the reach of all violation, and the troops of His Majesty will have no other duty to perform than that of causing the laws of good order and equity to be respected. The utmost confidence may be placed in the prudent dispositions of the reigning Duke of Brunswick, who is invested with the command of the line of demarcation.

But, if more particular assurances be requisite upon this subject, the King feels a pleasure in giving them by the present communication to His Britannic Majesty, and in declaring to him, in express and positive terms, that the present order of things will in no respect interrupt the freedom of commerce and navigation in the port of Cuxhaven; nor, above all, the continuation of the correspondence with England. On the contrary, the officer commanding the troops of the King garrisoned in the bailiwick of Ritzebüttel, will make it his duty to give it every possible facility.

On the whole, the proceeding which the King has, from necessity,

been obliged to follow, does not admit of any equivocal interpretation. It has no other object than the maintenance of the system of which he is the author and defender; and this object shall not be exceeded. His views and conduct have procured him the confidence of all Europe, and they never will be found inconsistent; and though it is not to be anticipated that the other Powers will be disposed to misconceive the purity of his views in the present case, yet His Majesty reserves to himself the privilege of explaining himself further and in a suitable manner to those who may be entitled to such explanation.

HAUGWITZ

**Proclamation of the King of Prussia, November 23, 1800, announcing the Occupation of Ritzebüttel and Cuxhaven<sup>1</sup>**

By express order of His Prussian Majesty, Frederick William III, my most gracious sovereign, announcement is made that the temporary occupation of the District of Ritzebüttel and Cuxhaven by the troops which I command and which are a detachment of the army of observation under orders to protect the armed neutrality of the north and of Germany, has been caused by the capture of a Prussian ship. The difference arising from this capture has at length been arranged after certain customary explanations and protestations of friendship.

But as the march of the troops, which became necessary as a result of the lack of success of the first explanations, had been ordered and was already partially executed, His Prussian Majesty deemed it advisable to proceed with the execution of the orders and to take possession of Ritzebüttel and Cuxhaven, in order to prevent similar disputes in future, and to make sure, for the greater security and observance of neutrality, of a place so important and so necessary to the States below the line of demarcation.

Such is the only object of the troops under my orders. As their head, my first desire is to preserve public security and tranquillity, particularly with regard to the system of neutrality; and not only will

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 7, p. 165.

I uphold with all my forces the authority of the magistrates appointed by the city of Hamburg, but I shall also protect the rights of all inhabitants or foreigners who come here in the course of their business, and especially in their commerce and navigation, which shall not be interrupted in the slightest degree, but, on the contrary, better protected and encouraged, without the least alteration in the constitution and practices of the district which I am occupying.

All persons, therefore, who inhabit or happen to be in this district, are enjoined to show toward the troops that I command the same friendly regard and bearing as these troops have toward them, and thereby avert the inevitable fatal consequences, which would result from the opposite attitude.

#### **Explanatory Answer to the Observations on the subject of the Capture of Neutral Ships, December 16, 1800<sup>1</sup>**

The late misunderstanding between the Danish and British Governments is now happily removed by a convention alike satisfactory to both nations, and that harmony again restored between the two Courts, which for a moment had been interrupted. The scandalous reports that this interruption gave birth to, are now refuted by evident facts; the fantastical notion of great and extensive plans, formed by the northern Powers for diminishing the trade and navigation of Great Britain, has vanished; and we see, in the clearest manner, the fair and honorable conduct of a State, which certain persons have not been ashamed rashly to accuse of assisting a commerce carried on contrary to treaties, by affording the protection of its ships of war to vessels laden with contraband. Of the six ships which were captured under convoy of the *Freya* frigate, the cargoes were most minutely examined; the result, however, was, that not only not the smallest particle of contraband commodities could be discovered, but not even the least proba-

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 180. "This paper was written in answer to the preceding publication issued by a noble Lord [*ante*, p. 494]. It is of high importance, as it discusses the great question which now interests the public. It has only been circulated in private, but it is supposed to carry with it an authority almost official." *Ibid.*



bility of any hostile or illicit interest being mingled in the property; such an event was, doubtless, but little expected by those persons who have been already alluded to; it disappointed their wishes, it baffled their endeavors to disseminate the seed of national hatred and rancor amongst their countrymen, and, if possible, to extend the first dissatisfaction to an irremediable breach of amity, when perhaps the public disasters might afford them the opportunity of gratifying their private animosities or ambition; the reconciliation, on the contrary, which has taken place, will unite still closer two nations, between whom an old and unremitting friendship has subsisted; more especially, if to this public union be superadded a mutual confidence between the subjects of the respective countries; and if those impressions be removed, which such violent accusations frequently repeated, and even under the sanction of important names, must necessarily have left behind.

Amongst the various publications which have appeared in England upon this subject, some observations inserted in the *London Chronicle*, and other papers, and universally understood to have been written by a nobleman, who not only since resided at Copenhagen in a diplomatic character, are remarkable, as well from the implacable tone in which they are delivered, as on account of the magnitude of the charges contained in them. The reasons which might induce that noble Lord to so violent a display of hatred against Denmark, are pretty generally known, or it could not but create surprise in his readers, that such a stream of invectives should flow from the pen of a gentleman who had been lately invested with the high and respectable office of representing his sovereign at the Court of that very nation against which, though still in alliance, his invectives were directed; of a gentleman, whose situation at that Court must necessarily have made him acquainted with the many violations of neutral commerce, of which, either as the natural consequence of the principles adopted by the British Government, or as transgressions of their orders, such frequent and well-founded complaints had been made; lastly, of a gentleman who could not be ignorant of the many regulations which the Danish Government had made to prevent abuses, and which, had they been suffered to pass unnoticed, might indeed have rendered it questionable, how far the neutrality and intentions of Denmark were sincere. It would have been more honorable for his Lordship, more consistent with the public character which he had sustained, to have explained any misunderstandings that had arisen, to have soothed the irritation of men's

minds, and to have spoken the language of peace, at the time when a dangerous spark, fallen amongst the nations of the north, threatened to extend still further that general conflagration in which Europe was involved; his Lordship, however, has thought proper to display a very different way of thinking.

We will now examine accurately the charges contained in the above-mentioned publication. It is not of the actions of individuals of which he is complaining; it is of the general sentiments of a nation, of the intentions of its government: these are the objects of his attack. He accuses the northern Courts, and particularly that of Denmark, of looking with an eye of jealousy and envy at the commercial prosperity of Great Britain; he represents the Danes as a nation at semi-warfare with England, under the mask of neutrality; he warns his countrymen to be on their guard against "stiletto attacks and secret blows from beneath the neutral cloak of Denmark and Sweden"; he then goes on to assert, that "the illicit practices of neutrals assume the aspect of an hostile disregard to common usage and the law of nations, and appear to be countenanced by those very authorities, whose duty it is to check and suppress them"; in fine, he holds out Denmark in particular, "as the standard of the most unwarrantable proceedings ever ascribed to a nation in amity with His Majesty."

It is hard innocently to suffer under the pressure of circumstances, but one may sustain mere losses and be silent; it is afflicting to see one's property suddenly exposed to accidents, which threaten to annihilate at a blow those fruits of our labor which have been slowly and gradually acquired; an open attack rouses one's powers to resistance, and constancy will always find, in struggling for a good cause, means and resources which the assailant never thought of; but the most painful of all trials is to find one's self, when suffering, misrepresented and abused; nor can it be denied that his malice is the most effective, who, working upon the irritated passions, excites suspicion and hatred in the minds of nations which were, till then, united in mutual bonds of friendship and alliance.

It is not the intention of these sheets to renew the memory of an affair which should have rendered the author of the observations more cautious in what he published; much less do we propose to defend the actions of individuals, whose punishment (if they have really given cause for complaint) belongs solely to courts of justice; on the contrary, we shall confine ourselves to what the noble Lord has been

pleased to assert respecting the sentiments and general conduct of the Danish Government, taking, at the same time, the opportunity thoroughly to examine these pretended plans of commercial aggrandizement, which he so roundly accuses our nation of endeavoring to carry into effect.

With respect to the supposed jealousy of Denmark and her Government, at the commercial prosperity of Great Britain, it is so totally forgotten, that, even in the course of the present war, by a new regulation of the customs, a variety of foreign articles, the importation of which was till then prohibited, are now permitted to be brought in, and of consequence a new channel of trade opened to other nations. Can it have escaped the reflection of any impartial observer, that such a change of commercial regulations is the very reverse of any plan on the part of Denmark to injure or diminish the trade of her neighbors; or that the English, whose ships are admitted to equal privileges with those of Danish subjects themselves, and whose industry and enterprise are so much greater, must be the principal gainers by this alteration? Upon the question, therefore, of the principles and spirit of the Danish Government, it is but reasonable if we insist upon being tried and adjudged by such measures.

With respect to those abuses of neutrality, which the noble Lord does not hesitate to represent as countenanced and supported by the Danish Government, it can not be denied, that some particular persons have, by their conduct, given cause for a reasonable suspicion of endeavoring, in their connections with foreigners, improperly to convert the laws and treaties of their country to their private advantage. The question however is, whether the Danish Government (whose duty it never can be pretended to be, to put arbitrary bounds to the lawful commercial profits of its subjects) has ever taken any steps towards preventing such abuses as might justly supply occasion for complaint; whether, both before and after the commencement of the present war, laws have not been published, and other measures taken, the grand object of which was to preserve the trade of Denmark within the limits prescribed by treaty, by checking the fraudulent designs of certain unprincipled individuals; and, finally, whether those offenders, whose transgressions have come to the knowledge of the magistrates, have been brought to public justice, and punished as they deserved?

Immediately upon the commencement of maritime operations in the present war, the necessary qualities and duties of those persons who

were desirous, either as ship-owners or masters, to enjoy the advantages which the happy neutrality of Denmark seemed to offer, were most minutely and accurately defined by two royal ordonnances, dated 22d and 23d of February, 1793.<sup>1</sup> According to the rule laid down in these ordonnances, every person who solicited a royal passport must be a Danish citizen, settled within the King's dominions, that is to say, having a fixed abode, the domicile and residence, if married, of his family, and if not, of himself, when not occasionally absent upon business; he must also, if thus qualified as a citizen, be provided with a certificate from the proper magistrates, stating his declaration upon oath before them, either that the ship is solely his property, or, if there be coowners, that every one of them without exception is a Danish subject; together with a clause also upon oath, that the ship is not laden with any articles declared to be contraband by any treaty, nor with goods belonging to any of the belligerent Powers or their subjects. It is not till after the fulfilment of all these conditions, that a passport can be issued, which even then, in order to prevent all possible abuses by a second expedition, is valid only for a single voyage, that is, till the return of the ship to some port in Denmark. It must be further observed, that all those vessels which are intended to sail beyond Cape Finisterre, must be provided with other passports, grantable to none but such as have already been Danish citizens for the space at least of three years. I shall pass over the further obligations binding on ship-owners, as to other needful documents for their vessels; such are the builder's brief, bill of sale, measuring-bill, muster-roll, etc., etc., and proceed to a few necessary explanations on the two subjects of contraband and admission to the rights of burgher or citizen.

Upon the breaking out of the present hostilities, a very considerable number of persons delivered in petitions, praying to be admitted to the privileges of the burghership, some with intent to settle in a country exempted from the horrors of war; others, that, in their respective characters of mariners, or ship-masters, they might again obtain employment in that way of life in which they had been educated, and which could now no longer be had in their native countries: this was more especially the case in His Majesty's German dominions, which being situated nearer to the scene of war, seemed, upon that account, to require more particular attention. The precaution, there-

<sup>1</sup>See *ante*, p. 436

fore, which had been taken by the ordonnances of the 22d and 23d of February, 1793,<sup>1</sup> were not thought sufficient ; and accordingly two other ordonnances were published on the 23d and 24th of December, 1796, by which it was decreed, that, besides the conditions already detailed, no married man should be admitted to the rights of a burgher, whose family resided in any other place than that in which he was a candidate for the burghership ; and that every captain or master of a vessel should find undeniable security to the amount of 200 rix-dollars, which security was not to be released till the expiration of five years ; a space of time considered as sufficient to determine whether he entertained a real intention of settling forever within the territories of His Danish Majesty. It was further directed, in order to prevent foreigners from settling in the villages or in the country, where they might easily withdraw themselves from the eyes of the police, that no stranger should be permitted to exercise the profession of a mariner, unless he became a burgher of some commercial town or other place entitled to the same privileges. When these facts and ordonnances are compared with what the noble Lord has been pleased to advance as to the facility of Danish burghership, asserting, "that the privileges of being admitted to the rights of a burgher in each Danish city, is sold to the first comer, without any attention being paid whether the person is a Cherokee Indian, Mandingo negro, English or Dutchman," one can not but be led to suspect that the accusation is founded on something else than mere ignorance of the real situation of affairs.

Nor less extraordinary is the charge which the noble Lord has ventured to make with respect to contraband. "The harbors," says he, "of Carthagena, Cadiz, Ferrol, Toulon, L'Orient, Brest, and Rochefort, have received all their naval stores from the hands of neutrals": and then he goes on to impeach the Danish flag, as taking the principal share in this illicit commerce. It is only the consummate assurance with which this accusation is made by the pen of a man of his rank and office, that can, perhaps, for a moment procure it credit with a few of his countrymen. If, indeed, the Government of Denmark has, upon any point, made use of peculiar precautions to secure itself from blame or suspicion, it has been upon this. Exclusive of the rules laid down in the afore-mentioned royal ordonnances, another decree was promulgated on the 28th of March, 1794, under a supposition that some

<sup>1</sup>See *ante*, p. 436.

abuses had taken place; in this the exportation of every species of contraband to a belligerent State is severely prohibited: and in case of the shipment of such articles for neutral ports, the ship-owners are bound to deliver to the proper magistrates certificates of the arrival and unloading of these articles at the respective neutral ports to which they had been avowedly destined. We will venture to assert, that no commercial nation ever before adopted such strong and effectual means to avoid and secure itself from any reproach of this sort; and we defy, in the face of all Europe, the noble Lord, and all our other open and secret enemies, to produce a single fact to prove, that from this period there has been exported from any Danish port any contraband of war destined to any port of a belligerent. Had his Lordship been acquainted with such an instance, he had the means of preferring his complaints in the name of his nation, with the most positive certainty of obtaining all possible satisfaction. Such an odious insinuation, therefore, whether originating from the noble Lord himself, or from some other person, of whose secret malice he may not have been aware, thrown out too in general expressions, without proof, without instancing a single fact, and at a time when fears and anxieties pervaded every bosom, can not but render the motive to it extremely suspicious.

The ordonnance of July 25, 1798, concerning the merchantmen from Fleckeroe, contained also the strictest regulations that can well be devised for preventing the secret conveyance of military contraband by the Danish merchant ships sailing under convoy: the result has fully demonstrated the efficacy of these measures; and the severity which has been displayed in punishing every offense against these regulations, when publicly denounced and legally proved, must convince every impartial observer, that the Danish Government was seriously resolved not to suffer the violation of its laws. The partners in a mercantile house in Copenhagen, against whom an information was laid at the suit of the King's attorney, for an abuse with respect to royal sea passes, have long since been exiled: another person, a ship-owner, who had sold his name as a cover for vessels belonging to belligerents, was punished with banishment, his name rendered infamous, and his property confiscated; and even at this moment several prosecutions of the same nature are pending before the tribunals. So much by way of reply to the naked assertion of the noble Lord, that any illicit and

fraudulent practices of neutralization are favored and supported by those very authorities upon whom it is incumbent to prevent the flag from being abused, and to watch over the lawful course of commerce.

But our author, who is, it seems, fully instructed in the secret springs which actuate the northern Powers, and Denmark in particular, supplies us with some perfectly new, and indeed unexpected illustrations. Great plans, says he, were formed for monopolizing the trade and navigation of the Dutch into Danish hands; for covering the trade to the French and Dutch West India settlements, and converting it to their own profit: the whole traffic of the Mauritius was carried on through Danish hands; the settlement at Batavia was alone, by their means, preserved to the mother country; the hostile design of interrupting the commerce of Britain became prevalent throughout the nation; and the Government found itself as unable to resist the temptation of levying taxes and imposing duties upon this commerce, as the merchants were of monopolizing it.

The strong and obvious reply which everybody acquainted with the subject must make to the accusation, is this, that the Danish Government never has interfered, nor does it now in the smallest degree, with the commerce of its subjects; it acknowledges it to be its duty to promote the prosperity of the country by every proper support on its part; to protect every fair branch of industry; and, as far as may be in its power, to promote every natural and accustomed trade, and secure it from molestation; but as to speculations, it leaves these entirely to the individuals who make it their business to avail themselves of times and circumstances, according to their skill: in such cases it only interferes when compelled to act either as a judge of the actions of its subjects, or as their protector against unjust attacks. With respect to the revenues which the Danish Government derives from the trade carried on by its subjects, it is indeed extraordinary how these can be an object of reproach in the mouth of the subject of a country, which from her own commerce, extended over every ocean, collects the most considerable part of her revenue, and the most efficacious means of greatness. In Denmark these duties are so moderate, that they may be considered as barely furnishing the supply necessary for those various charges of the State, which the conduct of the belligerents, and the precautions requisite for securing trade from absolute destruction, have occasioned; and the Government has always been willing to forego a part the moment it appeared likely to produce misunder-

standing or inconvenience; such, for instance, was the revoking the liberty granted of carrying freights from the East Indies to ports in Europe (a privilege then used by only four vessels), as soon as it was apprehended that its further use might give rise to abuses, and cause complaints on the part of the belligerent Powers: such, also, was its putting a stop to the distribution of those passports, which, in a few instances, had been granted to Danish ship-owners in Europe for such vessels as they had given instructions to purchase in the East Indies.

But to return to the commercial projects pretended by our author to have been formed by Denmark, and to the question of whether there really does exist a plan for monopolizing the French and Dutch East and West India trade: I cannot but think such an accusation rather singular from an English statesman, who certainly ought not to have been ignorant that his countrymen, even before his publication came out, had rendered the very idea of such a design impossible, by seizing on the greatest part of the French and Dutch settlements both in the East and West Indies: such a plan too must have been discovered by efforts in some degree at least corresponding with the greatness of the undertaking. If, therefore, the case be otherwise, the noble Lord must forgive us for treating the suggestion as altogether a chimera of his own brain, and the facts which follow will throw some light upon the subject.

According to the best statistical accounts, the French trade in the West Indies before the revolution, employed every year 600 vessels, each, upon an average, of 250 tons: the Dutch trade to Surinam, and the other West India settlements, required every year about 107 vessels. The Dutch East India Company sent every year to Batavia between 20 and 30 large vessels; and the French trade to the Mauritius, Bourbon, and the coast of Guinea, employed about 180 vessels.

It might be foreseen that a part of this trade, during a war between the great maritime Powers, would fall into neutral hands; and a nation, which owes its flourishing condition to the extent of its trade, can not take it amiss that the merchants of other countries also know how to make use of conjunctures: but what proportion do our commercial undertakings bear with respect to the plans supposed to be formed by us?

For the Danish trade to the West Indies, only the following passports have been distributed throughout all the Danish dominions:



In the year 1797, to vessels bound for St. Croix, 23; for St. Thomas, 21; for St. Croix and St. Thomas together, 25; for the West Indies, without mentioning any place in particular, 5; for foreign settlements in the West Indies, 12.

In the year 1798, for St. Croix, 26; for St. Thomas, 22; for St. Croix and St. Thomas together, 18; for the West Indies in general, 1; for foreign settlements in the West Indies, 9.

In the year 1799, for St. Croix, 28; for St. Thomas, 18; for St. Croix and St. Thomas together, 19; for the West Indies in general, none; for foreign settlements in the West Indies, 10.

Returned from the East Indies, besides those ships that belong to the East India Company, and which only carry on a direct trade to the settlements belonging to Denmark:

In the year 1797, eleven vessels for private account, five of which were from the Danish settlements at Tranquebar, and in Bengal: the other six from the different European settlements at the Cape of Good Hope, and east of it;

In the year 1798, thirteen ships for private account, four of which were sent from the Danish, the rest from other European settlements.

In the year 1799, likewise thirteen ships for private account, four of which also were from the Danish settlements.

If to these be added one single vessel which has unloaded a cargo, chartered in the East Indies upon freight to a port without the Danish dominions, this is a complete list of all the vessels returned from the East Indies for the account of private owners during the above-mentioned years.

The comparison of this list, with the many hundred vessels which were occupied in the French and Dutch East and West India trade, will fully enable the reader to judge of the reality of the plans and operations of commerce, said, by the noble Lord, to be adopted by us, as well as of the amount of our profit, greatly lessened by the frequent captures of many valuable cargoes. If, at the same time, it is considered that a trade to all the different corners of the world occupies the speculations of Danish merchants even in the most profound peace, and has occasioned a proportionable number of regular expeditions, the increase of our commerce in these branches, the direct trade to our own settlements being deducted, will hardly justify any jealous apprehension, or be looked upon as an encroachment upon the commerce of Great Britain.

That the charge of hostile endeavors to diminish the trade of Great Britain is not founded upon real fact, or upon any injuries done to that country, is fully demonstrated by taking a general view of its traffic. The mercantile fleet of Great Britain covers every sea; and in every session of Parliament, the Minister himself congratulates his nation on account of the flourishing state of its commerce, which, during the course of the present war, has arrived to a height beyond any example of preceding times. The value of the import trade of Great Britain has arisen from 17,804,024*£* to which it amounted in the year 1787, to above 24 millions, which was the amount in the year 1798. The export, which in the year 1787 amounted to 16,870,114*£* was in the year 1798 announced to be 33,655,396*£*. In the year 1792, 284 vessels arrived in the river Thames from the British settlements in the West Indies. In the year 1798, their number was increased to 347. The maritime trade of London has, since the year 1792, according to accounts laid before Parliament, been augmented by 1,000 vessels from foreign ports, and the trade of the whole country in proportion. After such proofs, it must be plain in what light complaints of encroachments upon British commerce are to be considered.

Denmark has not been so fortunate in the increase of her commerce, and in the undisturbed enjoyment of those advantages, to which her neutrality (a neutrality not maintained without many sacrifices) ought justly to have entitled her. If, indeed, her trade, during the first years of the war, was considerably augmented, those advantages have, however, of late remarkably decreased, and some sources have been entirely lost, partly by occurring circumstances, and partly by the system adopted by Great Britain. The shipping of Denmark has of late evidently diminished. The rigorous measures of the British Government; the extended instructions given to their ships of war and privateers, joined to the frequent and vexatious conduct of the latter in even going beyond these instructions; the assumed authority of the tribunals, and, in particular, the unwarrantable proceedings of the inferior courts of admiralty out of Europe, together with the slow progress of suits in the superior courts of justice: these, and other circumstances, the recital of which would exceed the limits of this answer, have not failed, by their influence, to destroy our trade in the first moments of its prosperity.

By declaring even principal ports to be in a state of blockade, during

the last two years, Great Britain has stopped the most considerable channels of Danish commerce, which is not so much founded on mere speculation, as on the export and import of mutual necessities. In cases of blockade, the rights of the blockading Power have received an extension, which is neither founded on common usage, nor on the law of nations. Is it reasonable that a mere declaration should be sufficient to repel all neutral ships from the entire coasts of a country, even when there is not an armed vessel to be seen for the purpose of effecting the blockade? Nay, for a neutral to have left a port blocked up in this manner, and at which she had arrived before that declaration, has been esteemed a crime to be punished with condemnation. Between the declarations of all the Dutch harbors being in a state of blockade, and the end of August in the present year, 120 Danish vessels have been captured by the English: some of which are condemned, others restored, and several still waiting judgment in the first instance. Besides these, not less than 60 undecided cases are pending in the court of appeals: the dates of some of these are very old, and they are all of importance. It is, moreover, almost grown into a rule, that when the neutral owner, after such a long delay, which is quite contrary to treaty, has at length obtained judgment in his favor, neither the expenses nor interest are to be paid to him. I shall remain silent as to the many injustices committed, as well by privateers as by the tribunals in the West Indies, where cargoes, consisting of Danish produce, in vessels, of which there was not the smallest doubt of their being Danish, and bound for Danish settlements, have been confiscated without the least compunction, and that on the most unreasonable grounds. This may be sufficient to prove, that Denmark, much rather than Great Britain, is entitled to complain of encroachments on her trade, and of commercial jealousy.

What the noble Lord finally has been pleased to say of the political strength of Denmark, lies not within the bounds of this essay. He may, however, rest assured, that Denmark, in the wisdom of her Government and in the patriotism of her subjects, will always find effectual means to defend herself and maintain her rights; and that this brave nation, on whom he endeavors to throw an odium, does not yield in patriotism and fidelity to the Government of any other nation upon earth

*December 16, 1800.*

**Convention between Russia and Sweden for<sup>a</sup> the Reestablishment of  
an Armed Neutrality, December 16, 1800<sup>1</sup>**

In the Name of the Most Holy and Indivisible Trinity.

The freedom of navigation and security of commerce of neutral Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the King of Sweden and His Majesty the Emperor of all the Russias, led by their love of justice and by an equal solicitude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the cooperation of the Governments interested in their maintenance to make them respected. With this view His Imperial Majesty has manifested, by the declaration of August 15<sup>2</sup> to the Courts of the north, to whose interest likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Swedish Majesty shares the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the King of Sweden and His Imperial Majesty of all the Russias have appointed as their plenipotentiaries, to wit: His Swedish Majesty, Baron Court de Stedingk, one of the Lords of the Kingdom of Sweden, his Ambassador Extraordinary to His Imperial Majesty of all the Russias, Lieutenant General in his Armies, Chamberlain of the Queen Dowager, Colonel of a Regiment of Infantry, Chevalier Commander of his Orders, Grand Cross Chevalier of his Order of the Sword, and Chevalier of the French Order for Military Merit: and His Imperial Majesty of all the Russias, Count Theodore de Rostopsin, his Privy Councilor, Member of his Council, Principal Minister of the College of Foreign Affairs, Post-

<sup>1</sup>Translation. For the French text, see Appendix, p. 672. Accepted and ratified by His Swedish Majesty on December 20, and by His Imperial Majesty of all the Russias on December 8/20 of the same year.

<sup>2</sup>August 27, 1800, new style. *Ante*, p. 489.

master General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem, Chevalier of the Orders of St. Andrew, of St. Alexander-Newsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of St. Ferdinand, of St. Maurice and of St. Lazare, of St. Ferdinand and of St. Hubert: who having exchanged their respective full powers have agreed upon the following articles:

#### ARTICLE 1

His Majesty the King of Sweden and His Majesty the Emperor of all the Russias declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

#### ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Majesty the King of Sweden and His Imperial Majesty of all the Russias declare that they recognize as such only the following articles, to wit: cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent Parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

#### ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Majesty the King of Sweden and His Imperial Majesty of all the Russias intend and desire that all other trade shall be and remain absolutely free. In order to

safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be rendered to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the royal or imperial navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband merchandise, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers, hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in

their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act,<sup>1</sup> in order that there may be no allegation of ignorance thereof.

#### ARTICLE 4

To protect the commerce of their subjects in common on the basis of the principles hereinbefore laid down, His Majesty the King of Sweden and His Imperial Majesty of all the Russias, have seen fit to equip separately a number of war-ships and frigates proportional to this object, as the squadrons of each Power will have to take their station and to be used for such convoying as its commerce and its navigation may require, in conformity with the nature and the quality of the trade of each nation.

#### ARTICLE 5

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do not belong, it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captain and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the Government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

#### ARTICLE 6

If it should happen, however, that the merchant ships of either of the Powers should be in waters where the war-ships of the same nation are not stationed and where they could not have recourse to their own convoys, then the commanding officer of the war-ships of the other Power must, if requested, give them, sincerely and in good faith, the assistance that they may need, and in such case, the war-ships and frigates of either of the Powers shall act as a support and protection to the merchant ships of the other; it being understood,

<sup>1</sup>For the regulations as published by the King of Sweden, see *post*, p. 549.

however, that those asking such aid shall not have engaged in any commerce that is illicit or contrary to the principles of neutrality.

#### ARTICLE 7

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

#### ARTICLE 8

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Majesty the King of Sweden or of His Imperial Majesty of all the Russias should be insulted, pillaged, or taken by the war-ships or privateers of either of the Powers at war, then the Minister of the injured party shall make representations to the Government whose war-ships or privateers shall have committed such acts, demand the seized merchant ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Power so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

#### ARTICLE 9

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction both for the insult to their flag and for the losses caused to their subjects.



## ARTICLE 10

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

## ARTICLE 11

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Majesty the King of Sweden and His Imperial Majesty of all the Russias agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages.

## ARTICLE 12

In order that the Powers at war may not allege ignorance of the arrangements concluded between their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

## ARTICLE 13

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 4/16, 1800.

[L. S.] COURT STEDINGK

[L. S.] COUNT DE ROSTOPSHIN

**Convention between Russia and Denmark and Norway for the Re-establishment of an Armed Neutrality, December 16, 1800<sup>1</sup>**

In the Name of the Most Holy and Indivisible Trinity.

The freedom of navigation and security of commerce of neutral Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway, led by their love of justice and by an equal solicitude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the co-operation of the Governments interested in their maintenance to make them respected. With this view His Imperial Majesty has manifested, by the declaration of August 15<sup>2</sup> to the Courts of the north, to whose interests likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, of the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Danish Majesty shares the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway have appointed as their plenipotentiaries, to wit: His Imperial Majesty, Count Theodore de Rostopsin, His Privy Councilor, Member of His Council, Principal Minister in the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem, Chevalier of the Orders of St. Andrew, of St. Alexander-Newsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of SS. Maurice and Lazare, of St. Ferdinand and St. Hubert; and His Danish Majesty, Niels de Rosenkrantz, His Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias, his Chamberlain and

<sup>1</sup>Translation. For the French text, see Appendix, p. 677.

<sup>2</sup>August 27, 1800, new style. *Ante*, p. 489.

General Aide-de-Camp; who, after having exchanged their respective full powers, have agreed upon the following articles:

#### ARTICLE 1

His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

#### ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway declare that they recognize as such only the following articles, to wit: cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

#### ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary

interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be given for the insult to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the imperial or royal navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband merchandise, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralities and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the

severest penalties, shall be printed at the end of the present act,<sup>1</sup> in order that there may be no allegation of ignorance thereof.

#### ARTICLE 4

To protect in common the commerce of their subjects on the basis of the principles hereinbefore laid down, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway have seen fit to equip separately a number of war-ships and frigates proportional to this object, as the squadrons of each Power will have to take their station and be used for such convoying as its commerce and its navigation may require, in conformity with the nature and the quality of the trade of each nation.

#### ARTICLE 5

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do not belong, it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captain and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the Government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

#### ARTICLE 6

If it should happen, however, that the merchant ships of either of the Powers should be in waters where the war-ships of the same nation are not stationed and where they could not have recourse to their own convoys, then the commanding officer of the war-ships of the other Power must, if requested, give them sincerely and in good faith the assistance that they may need, and in such case, the war-ships and frigates of either of the Powers shall act as a support and protection to the merchant ships of the other; it being understood, however, that those asking such aid shall not have engaged in any commerce that is illicit or contrary to the principles of neutrality.

<sup>1</sup>For the regulations as published by the King of Sweden, see *post*, p. 549.

## ARTICLE 7

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

## ARTICLE 8

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Imperial Majesty of all the Russias or of His Majesty the King of Denmark and Norway should be insulted, pillaged, or taken by the war-ships or privateers of any of the Powers at war, then the Minister of the injured party shall make representations to the Government whose war-ships or privateers shall have committed such acts, demand the seized ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Power so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

## ARTICLE 9

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction for the insult to their flag and for the losses caused to their subjects.

## ARTICLE 10

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in

the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

#### ARTICLE 11

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages hereof.

#### ARTICLE 12

In order that the Powers at war may not allege ignorance of the arrangements concluded between Their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

#### ARTICLE 13

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 4/16, 1800.

[L. S.] NIELS DE ROSENKRANTZ

[L. S.] COUNT DE ROSTOPSIN

#### SEPARATE AND SECRET ARTICLES

#### ARTICLE 1

In order to give all possible weight and stability to the system of armed neutrality, Their Majesties the King of Denmark and Norway and the Emperor of all the Russias agree to send to sea in the spring, as soon as the season will permit, a considerable number of their war-ships, for use wherever occasion may demand, and to keep them there

as long as the circumstances which gave rise to this necessity shall continue to exist. His Imperial Majesty shall equip for this purpose fifteen ships of the line and five frigates, and His Danish Majesty eight ships of the line and two frigates.

#### ARTICLE 2

Their Majesties mutually bind themselves, however, to take such measures as will enable them to increase this force if circumstances should require, or if there should be occasion to fight a superior enemy force or to feel apprehension because of the presence of such a force.

#### ARTICLE 3

Their Majesties, always regarding the Baltic as a closed sea, shall use every means in their power to guarantee its navigation and coasts against all acts of hostility, violence and molestation of every kind.

#### ARTICLE 4

If circumstances should render it necessary for the war-ships of His Imperial Majesty to pass the winter in the ports of Denmark and Norway, His Danish Majesty shall make all necessary arrangements, in order that these vessels and their crews may receive the same treatment as his own, observing the stipulations pertaining thereto contained in Article 6.

#### ARTICLE 5

If it should become necessary to join the squadrons, or if vessels belonging to the two sovereigns should be together, the ranking commanding officer, or if they are both of the same rank, the senior, shall assume command of the united vessels.

#### ARTICLE 6

When they set sail, the war-ships of the high contracting parties shall be provisioned for at least five months.

If at the end of this time the vessels of either of the two Powers should be in the ports of the other, they shall be furnished, at their own expense, with such provisions as they may need.

These separate, secret articles shall be considered and regarded as forming part of the Convention itself and shall be signed and ratified in the same way.



**Convention between Russia and Prussia for the Reestablishment  
of an Armed Neutrality, December 18, 1800<sup>1</sup>**

In the Name of the Most Holy and Indivisible Trinity.

The freedom of navigation and security of commerce of neutral Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the Emperor of all the Russias and His Majesty the King of Prussia, led by their love of justice and by an equal solicitude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the cooperation of the Governments interested in their maintenance to make them respected. With this view, His Imperial Majesty has manifested, by the declaration of August 15<sup>2</sup> to the Courts of the north, to whose interests likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, of the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Prussian Majesty shared the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such great success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the Emperor of all the Russias and His Majesty the King of Prussia, have appointed as their plenipotentiaries, to wit: His Imperial Majesty, Count Theodore de Rostopsin, his Privy Councilor, Member of his Council, Principal Minister of the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem, Chevalier of the Orders of St. Andrew, of St. Alexander-Newsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of SS. Maurice and Lazare, of St. Ferdinand and St. Hubert; and His Prussian Majesty, Count Spiridon de Lusi, Lieutenant General of Infantry of his Armies, his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias, Chevalier of the Order of the Red Eagle and of the Order of Merit;

<sup>1</sup>Translation. For the French text, see Appendix, p. 683.

<sup>2</sup>August 27, 1800, new style. *Ante*, p. 489.

who, having exchanged their full powers, have agreed upon the following articles:

#### ARTICLE 1

His Majesty the Emperor of all the Russias and His Majesty the King of Prussia declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

#### ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Imperial Majesty of all the Russias and His Majesty the King of Prussia declare that they recognize as such only the following articles, to wit: cannon, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, guns, gun flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

#### ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Imperial Majesty of all the Russias and His Majesty the King of Prussia intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That the effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be given for the insult to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the imperial or royal navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband merchandise, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act,<sup>1</sup> in order that there may be no allegation of ignorance thereof.

<sup>1</sup>For the regulations as published by the King of Sweden, see *post*, p. 549.

ARTICLE 4<sup>1</sup>

In return for this accession His Majesty the Emperor of all the Russias shall see to it that the commerce and navigation of Prussian subjects enjoy the protection of his fleets, by ordering all the commanding officers of his squadrons to protect and to defend from insult and molestation such Prussian merchant ships as happen to be along their course, as those of a Power that is friendly, allied and strictly observant of neutrality; it being understood, however, that the aforesaid ships shall not be employed in any commerce that is illicit or contrary to the rules of the strictest neutrality.

The same protection and the same assistance shall be given to the Prussian flag by Danish and Swedish war-ships, and His Majesty the Emperor of all the Russias binds himself to cooperate, if necessary, in the arrangements to be stipulated to this effect in separated conventions, to be concluded as a consequence of the present act between the Courts of Berlin, of Copenhagen, and of Stockholm.

## ARTICLE 5

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

## ARTICLE 6

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Imperial Majesty of all the Russias or of His Prussian Majesty should be insulted, pillaged, or taken by the war-ships or privateers of any of the Powers at war, then the Minister of the injured party shall make representations to the Government whose war-ships or privateers shall have committed such acts, demand the seized ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag.

<sup>1</sup>This article is substituted for Articles 4, 5 and 6 of the conventions with Sweden and Norway (*ante*, pp. 534, 540), and Article 5 of those treaties appears herein as a supplementary article (*post*, p. 549).

The Minister of the other contracting Party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Powers so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

#### ARTICLE 7

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction for the insult to their flag and for the losses caused to their subjects.

#### ARTICLE 8

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

#### ARTICLE 9

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Imperial Majesty of all the Russias and His Prussian Majesty agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages hereof.

#### ARTICLE 10

In order that the Powers at war may not allege ignorance of the arrangements concluded between Their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

## ARTICLE 11

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 6/18, 1800.

[L. S.] COUNT DE ROSTOPSHIN

[L. S.] SPIRIDON COUNT DE LUSI

## SUPPLEMENTARY ARTICLE

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do not belong, it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captain and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention,<sup>1</sup> shall lose all right to the protection of the contracting Powers, and the Government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

**Swedish Marine Regulations, December 23, 1800<sup>2</sup>**

The preamble states the necessity of rendering the rights of commerce clear and explicit. For this effect, in order to secure the protection of the Government, the commerce of Sweden must observe the following requisites:

1. In order that a ship be entitled to be considered as a Swede, she

<sup>1</sup>For the regulations as published by the King of Sweden, see *infra*.

<sup>2</sup>Translation. For the German text, see Martens, 2d ed., vol. 7, p. 281. See also, *Collection of State Papers*, vol. 11, p. 206. These regulations were revised on January 21, 1804, *post*, p. 629.

must be built in Sweden, or the provinces under her dominion; or shipwrecked on the Swedish coast, and there sold; or bought in a foreign country by a legal and authentic contract. If such purchase is made in a country threatened with war, it shall be considered legal if made three months prior to its actually breaking out. Every ship purchased must be naturalized. As however the naturalization of ships bought in a foreign country, and afterwards taken by a cruiser belonging to any of the belligerent Powers, may frequently produce disagreeable explanations in the sequel, it is hereby declared, that in time of war ships shall not be allowed to be naturalized which have formerly been the property of the belligerents or their subjects: nevertheless, with the exception of all ships that were naturalized before the present regulation was adopted, which shall enjoy all the rights which are connected with the character of neutrals and Swedes.

2. The captain of the ship must be provided with all papers requisite and proper for the security of his voyage. Of this kind are (in case the ship goes through the Sound), a certificate of the place where the vessel was built, an invoice, letters showing the cargo not contraband, Turkish and Latin passports, a certificate by the magistrate of the place, a pass for the crew, a copy of the oath of the owner; a charter-party with the subscription of the freighter, the captain, and the person freighting the vessel; a manifest with the like subscriptions, containing a list of the different articles of the lading, and the conditions of the intended voyage; and a bill of health when the same is necessary. If the voyage is merely to the ports of the Baltic or the Sound, the Turkish and Latin passes are not necessary: but the captains must have all the other papers enumerated, without exception.

3. All these documents must be made out and delivered in a Swedish port, unless when a ship has lost her papers by accident, or where they have been forcibly taken away, in which case these documents may be renewed in a foreign port, if the captain, immediately on his arrival, takes the precaution to exhibit an authentic and properly certified declaration, by which the accident is proved, or the ground stated on which he desires the renewal.

4. The captain is prohibited to have false acts or certificates, or duplicates thereof. He is likewise prohibited to make use of a foreign flag.

5. It is required that the captain and half of the crew shall be *Swedish subjects*.

6. Captains going to the main ocean shall be bound to follow the course pointed out in their instructions, and agreeable to the contents of their certification.

7. Ships destined for the ports of a belligerent Power must, with the utmost care, and under the severest penalties, avoid carrying any contraband commodities. To prevent all doubt or misunderstanding respecting what is contraband, it is agreed that the following goods shall be considered contraband.

8. All Swedish subjects are prohibited to fit out privateers against the belligerents, their subjects and property.

9. A Swedish ship can not be employed by a belligerent Power to transport troops, arms, or any warlike implements. Should any captain be compelled to do so by superior force, he is bound at least to exhibit a formal protest against such violence.

10. When a merchant ship is not under convoy, and happens to be brought to by a ship of war or privateer belonging to any of the belligerents, the captain shall not, in that case, oppose the searching of his vessel, but be bound faithfully to show all acts and documents which relate to her cargo. The captain and his people are strictly prohibited to keep back or destroy any of their papers.

11. If, however, such ship makes part of a convoy, the foregoing article shall not serve as the rule; but the captain's duty consists in punctually obeying the signals of the commodore of the convoy, for which purpose therefore he shall separate as little as possible from the convoy.

12. All captains are expressly forbidden to attempt going into a blockaded port, as soon as they are formally apprized by the officer commanding the blockade. In order to ascertain what a blockaded harbor is, this appellation is confined to those to which, by the exertions of the blockading Power with ships destined and adequate to the object, it is evidently dangerous to attempt running in.

13. In case a Swedish merchant ship is captured by a ship of war or privateer of any of the belligerents, the captain shall immediately transmit a circumstantial account, and duly explained, to the Swedish consul or vice consul of the place to which the ship is taken; and should there be no consul or vice consul there, he shall transmit a memorial to the Swedish consul of the district to which the place into which his ship is taken belongs.



14. Every captain of a Swedish merchantman, who strictly observes the above regulations and orders, shall enjoy a free voyage, protected by the laws of nations and the provisions of treaties; and to this end all public agents and Swedish consuls are required, in case of attack or insult, to give their support to the just and well-founded complaints on the subject. But those who, in any point whatever, neglect or violate their orders, must answer for the consequences of their conduct, without relying upon the protection of His Majesty.

15. By the contents of a recent order, His Majesty has prohibited the privateers of a foreign nation to enter or bring their prizes into the ports of his kingdom, except in case of their being driven in by stress of weather. In this case it is expressly prohibited to all whatsoever to buy the prizes, or any of the effects which the privateers have taken.

To which end publication, etc.

Given at St. Petersburg, 23d December, 1800.

GUSTAVUS ADOLPHUS

**Note of Mr. Drummond, British Minister, to Count Bernstorff, Danish Secretary of State for Foreign Affairs, regarding the Armed Neutrality League, December 27, 1800<sup>1</sup>**

The Court of London, informed that Denmark is carrying on with activity negotiations very hostile to the interests of the British Empire, thinks that it can not better fulfil the duties which such a circumstance prescribes, than by addressing itself directly to the Minister of His Danish Majesty, to demand from him a frank and satisfactory explanation.

In all the Courts of Europe they speak openly of a confederacy between Denmark and some other Powers, to oppose by force the exercise of those principles of maritime law on which the naval power of the British Empire in a great measure rests, and which in all wars have been followed by the maritime States, and acknowledged by their tribunals.

His Britannic Majesty, relying with confidence upon the loyalty of His Danish Majesty, and upon the faith of the engagements recently

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 210.

contracted between the two Courts, has not demanded from him any explanation on this head. It was his wish to wait for the moment when the Court of Denmark should think it its duty to contradict those reports, so injurious to its good faith, and so little compatible with the maintenance of the good understanding which had been re-established between the two countries.

At present the conduct and the public declaration of one of the Powers, which it is pretended have entered into this confederacy, do not permit His Majesty to preserve any longer towards the rest the same silence which he has hitherto observed.

The undersigned therefore finds himself bound to demand from his Excellency Count de Bernstorff, a plain, open, and satisfactory answer on the nature, object, and extent of the obligations which His Danish Majesty may have contracted, or the negotiations which he is carrying on with respect to a matter which so nearly concerns the dignity of His Britannic Majesty, and the interests of his people.

His Britannic Majesty, always ready to return all the marks of friendship which he may receive on the part of His Danish Majesty, hopes to find, in the answer of the Court of Copenhagen to this request, only a new occasion of manifesting these dispositions.

In transmitting this note to M. the Secretary of State, the undersigned avails himself, with pleasure, of this opportunity to assure him of the high consideration with which he has the honor to be,

His very humble and obedient servant,

W. DRUMMOND

To his Excellency the COUNT DE BERNSTORFF,

*Secretary of State of His Danish Majesty, etc., etc.*

**Note of the Spanish Ambassador at the Court of Stockholm to the Swedish Chancellor, in reply to His Letter concerning British Violations of the Swedish Flag<sup>1</sup>**

STOCKHOLM, *December 29, 1800.*

SIR: I have this moment received from my Court an answer to the dispatches, in which I communicated the first steps which I had taken

<sup>1</sup>*Ibid.*, p. 209.

with His Swedish Majesty, when I had the honor to present my first note on the subject of the outrage of which the English were guilty in the road of Barcelona.

The King, my master, has observed with regret the coldness with which the Swedish Court has received the complaint, while it has confined itself to feeble and indecisive measures, from which it does not even indulge the hope of any advantage. This view of the matter shows the small interest with which Sweden is prepared to act in the business. I can not conceal from you, sir, that this inactivity, which is observed in the applications of the Court of Sweden to that of London, might afford room to believe that this negotiation will be connected with other objects of private interest which demand temporizing measures, incompatible with that energy and zeal which His Catholic Majesty expected to see displayed by His Swedish Majesty, in regard to an affair which, as it involves the honor of his flag, would have afforded him an occasion to prove to Europe the warm part he takes in the interest of the maritime Powers, as well as to testify the value he puts upon the good understanding which hitherto has prevailed between the two Courts. In pursuance of a new order from my Court, I repeat, and formally insist upon what I demanded in my last note of the 17th October. I fondly flatter myself that His Swedish Majesty will adopt far more active measures than the contents of your note allowed me to hope. It is not probable that you will expose Swedish ships to all the severity of the measures which circumstances require to be exercised against suspected vessels, and whose conduct might be considered as connived at, unless the Swedish Court receives from England the most ample reparation respecting the affair of Barcelona.

I have the honor to be, etc.

THE CHEVALIER DE HUERTA

**Reply of Count Bernstorff to Mr. Drummond, December 31, 1800<sup>1</sup>**

The undersigned Secretary of State for Foreign Affairs, having given an account to the King his master of the contents of the note

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 211.

which Mr. Drummond has done him the honor to transmit to him on the 27th instant, is authorized to return the answer which follows:

The Court of London must have received very incorrect information, to have been able for a moment to presume that Denmark had conceived projects hostile against it, or incompatible with the maintenance of the good understanding which subsists between the two Crowns; and the King is very much obliged to His Britannic Majesty, for having furnished him with the opportunity of contradicting, in the most positive manner, reports as ill founded, as contrary to his most decided sentiments.

The negotiation which is carrying on at St. Petersburg, between Russia, Prussia, Sweden, and Denmark, has no other object than the renewal of the engagements which, in the years 1780 and 1781, were contracted by the same Powers for the safety of their navigation, and of which a communication was at that time made to all the Courts of Europe.

His Majesty the Emperor of Russia, having proposed to the Powers of the north to reestablish these engagements in their original form, Denmark has so much the less hesitated to consent to it, as, far from having ever abandoned the principles professed in 1780, she has thought it her duty to maintain them, and claim them upon all occasions, and not allow herself to admit in respect of them any other modifications than those which result from her treaties with the belligerent Powers.

Very far from wishing to interrupt those Powers in the exercise of rights which the war gives them, Denmark introduces into the negotiation with her allies none but views absolutely defensive, pacific, and incapable of giving offense or provocation to any one. The engagements she will make will be founded upon the strictest fulfilment of the duties of neutrality, and of the obligations which her treaties impose upon her; and if she wishes to shelter her innocent navigation from the manifest abuses and violence which the maritime war produces but too easily, she thinks she pays respect to the belligerent Powers by supposing, that, far from wishing to authorize or tolerate those abuses, they would, on their side, adopt measures best calculated to prevent or repress them.

Denmark has not made a mystery to any one of the object of her negotiation, upon the nature of which some suspicion has been infused into the Court of London; but she has not thought that she departed

from the usual forms, in wishing to wait the definitive result of it, in order to communicate an official account of it to the Powers at war.

The undersigned, not knowing that any of the Powers engaged in this negotiation has made a declaration, or adopted measures relative to its object, at which Great Britain might take offense or umbrage, can not without ulterior explanation reply to this point of Mr. Drummond's note.

Much less does he conceive in what respect the engagement taken by the previous convention of the 29th of August last can be considered as contrary to those which Denmark is about to enter into with the neutral and united Powers of the north; and in all cases in which he shall find himself called upon to combat or remove the doubts that shall have been conceived with respect to the good faith of the King, he shall consider his task to be very easy, as long as this good faith shall be introduced into the reproaches or suspicions advanced against His Majesty. He flatters himself that the English Government, after having received the required explanations, will have the frankness to allow that the provisional and momentary abandonment, not of a principle, the question with respect to which remained undecided, but of a measure, whose right has never been, nor ever can be, contested, can not be found at all in opposition to the general and permanent principles, relative to which the Powers of the north are upon the point of establishing a cooperation, which, so far from being calculated to compromise their neutrality, is destined only to strengthen it.

The undersigned would fain believe that these explanations will appear satisfactory to the Court of London; and that the latter will do justice to the intentions and sentiments of the King, and particularly to His Majesty's invariable desire to maintain and cement, by all means in his power, the friendship and good understanding which subsists between Denmark and Great Britain.

He has the honor to offer to Mr. Drummond the assurance of his most distinguished consideration.

BERNSTORFF

COPENHAGEN, *December 31, 1800.*

**British Instructions to Lieutenant General Trigge regarding His Majesty's Forces in the Leeward Islands, January 14, 1801<sup>1</sup>**

SIR: Information having reached this country which leaves no doubt, that the Courts of Copenhagen, Stockholm and Petersburg have agreed to revive the principles of the armed neutrality of the year 1780 and that extensive armaments are now preparing in the ports of the above-mentioned Powers, with the intention of supporting these principles and consequently of resisting by open violence the maritime rights of this country, as established by the law of nations, by the positive stipulations of treaties and by the usage of former wars, His Majesty has resolved to adopt such measures as a conduct so hostile to the just and ancient privileges of the British flag, calls for on his part, for the maintenance and preservation of the best interests of his people; and to employ every possible means, as well to obtain indemnity and reparation for the injury done to the property of His Majesty's subjects, in violation of the most solemn treaties, by the Power which has taken the lead in this confederacy, as to deprive the Courts of Denmark and Sweden (whose conduct has obliged him reluctantly to the resources they may expect to derive from their colonies and trade for entering upon, or carrying on a contest, which as soon as the season will admit of naval operations in the Baltic, it will not be in His Majesty's power to avoid, unless they shall in the interval be induced by this timely act of vigor and justifiable precaution to relinquish the system, to which they are actually engaged, and to give His Majesty such security as the case may appear to require, against the renewal of similar pretensions on their part.

In pursuance of this principle I am commanded to signify to you His Majesty's pleasure that immediately on the receipt of these instructions you are, in concert with the officer commanding His Majesty's naval forces on the Leeward Island station to make every necessary preparation for proceeding in His Majesty's name to seize upon and take possession of the Islands of St. Thomas, St. Croix and St. John and the Swedish Island of St. Bartholomew, together with all ships, stores, or public property of any description, belonging to Russia, Denmark or Sweden, which may be found in the said Islands. . . .

<sup>1</sup>Thorvald Boye, *De Væbnede Neutralitetsforbund*, p. 357.

**Additional Instructions to Lieutenant General Trigge, January 14, 1801<sup>1</sup>**

SIR: In addition to the instructions contained in my letter of this day's date I have to inform you that His Majesty from his anxiety to avoid coming to open war with Denmark and Sweden is still willing to entertain a hope, that the display of the vigorous and decided measures he is compelled to adopt against their trade and colonies may still induce them to relinquish their present engagements with Russia and to give such security as His Majesty may deem necessary for their observance of a system of neutrality consistent with the maritime rights of this country. Under these circumstances and until the effect upon the Courts of Copenhagen and Stockholm of the measures His Majesty has ordered to be taken, can be ascertained, whatever appearance of existing hostility these measures may assume, His Majesty is disposed to consider them rather as steps of just and necessary precaution, and with a view to indemnify his own subjects for the injury they have sustained by the confederacy to which these Powers are a party, than as arising out of an actual state of war.

This being the case you are not to consider any property or other articles liable to seizure, and which in such cases have usually fallen to the share of the captors as acquired to them for their advantage His Majesty reserving to himself to determine hereafter respecting the disposal of such property and to what amount an appropriation may be proper for the reward of the captors, and with this view you will cause all articles and effects coming under this description to be deposited in proper places of safety until His Majesty's pleasure shall be known or to be sent to this country on board the ships in which they may be seized as the nature of the cargo or stores may appear to require.

(P. R. O.)

**British Order of Council laying an Embargo on Russian, Danish, and Swedish Ships, January 14, 1801<sup>2</sup>**

*At the Court of St. James's, the 14th January 1801; present, the King's Most Excellent Majesty in Council.*

Whereas His Majesty has received advice, that a large number of

<sup>1</sup>Thorvald Boye, *op. cit.*, p. 358

<sup>2</sup>*Collection of State Papers*, vol. 11, p. 217.

vessels belonging to His Majesty's subjects have been and are detained in the ports of Russia, and that the British sailors navigating the same, have been and now are detained, as prisoners, in different parts of Russia; and also, that, during the continuance of these proceedings, a confederacy of a hostile nature, against the just rights and interest of His Majesty, and his dominions, has been entered into with the Court of St Petersburg by the Courts of Denmark and Sweden, respectively; His Majesty, with the advice of his Privy Council, is thereupon pleased to order, as it is hereby ordered, that no ships or vessels belonging to any of His Majesty's subjects be permitted to enter and clear out for any of the ports of Russia, Denmark, or Sweden, until further order; and His Majesty is further pleased to order, that a general embargo or stop be made of all Russian, Danish, and Swedish ships and vessels whatsoever now within, or which hereafter shall come into any of the ports, harbors, or roads within the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said ships and vessels; but that the utmost care be taken for the preservation of all and every part of the cargoes on board any of the said ships or vessels, so that no damage or embezzlement whatever be sustained.

And the Right Honorable the Lords Commissioners of His Majesty's Treasury, and the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

W. FAWKENER

**Notification of Lord Grenville, British Secretary of State for Foreign Affairs, to the Danish and Swedish Ambassadors regarding the Embargo on Danish and Swedish Ships, January 15, 1801<sup>1</sup>**

The undersigned, principal Secretary of State for Foreign Affairs, has been commanded by His Majesty to make the following communication to Count von Wedel-Jarlsberg, and Baron von Ehrensward, Danish and Swedish Envoys at this Court.

<sup>1</sup>*Ibid.*, p. 218.



His Majesty has heard with the sincerest concern, that at the moment when the Court of Petersburg had adopted the most hostile measures against the persons and property of His Majesty's subjects, the two Courts of Copenhagen and Stockholm had concluded a convention with that Power for the maintenance of a naval armed confederacy in the north of Europe. If the circumstances under which the convention alluded to was negotiated and concluded, could have left any doubt in His Majesty's mind respecting the objects to which it is directed, that doubt would, by the declarations of the Court of Petersburg, and still farther by the recent and official declarations of the Court of Copenhagen, have been completely removed. It is sufficiently known with what hostile intentions an attempt was made, in the year 1780, to introduce a new code of public law against Great Britain, and to support by force a system of innovation prejudicial to the dearest rights of the British Empire. But His Majesty has hitherto had the satisfaction to see that those arbitrary and injurious measures have been completely given up. At the beginning of the present war, the Court of Petersburg, which had taken a most active part in the establishment of the former alliance, entered into articles with His Majesty, which are not merely incompatible with the convention of 1780, but which are directly in the face of it; engagements which are still in force, and the reciprocal execution of which His Majesty is entitled to demand upon every principle of good faith, during the continuance of the war. The conduct of His Majesty towards the other Powers of the Baltic, and all the decisions of his courts of justice in regard to prizes, have been uniformly, and notoriously, founded upon those principles which previously to the year 1780 had guided all other European courts of admiralty. Nor had the intention to renew the former confederacy been communicated to His Majesty on the part of any of the contracting Powers, till he received information of the actual signing of the convention, and had been apprized by the declaration of one of the parties, that the object of it was to confirm the stipulations entered into in the years 1780 and 1781, in their original shape. No further doubts therefore can remain, that the object of their confederacy, and the naval preparations, which the contracting Parties pursue with vigor, is nothing less than to place themselves in a situation to maintain by force, pretensions which are so obviously inconsistent with the principles of justice, that those Powers, which, when neutral, brought them forward, were the first

to oppose them when they became belligerent, and the establishment of which, if it should be effected, would be one of the principal means of overthrowing the strength and security of the British Empire. On the knowledge of these circumstances, His Majesty the King would act contrary to the interest of his people, the dignity of his crown, and the honor of his flag (which by the discipline, courage, and skill of his navy, has risen to so extraordinary a pitch of greatness), were he to delay the adoption of the most effectual measures to repel the attack he has already experienced, and to oppose the hostile effects of the confederacy armed against him. His Majesty has therefore authorized the undersigned officially to communicate to Count Wedel-Jarlsberg and Baron von Ehrensward, that an embargo has been laid upon all the Danish and Swedish ships in the ports belonging to His Majesty. But in the execution of this measure His Majesty will take care that no violent or severe proceedings shall be exercised on the part of His Majesty towards innocent individuals. His Majesty is still animated by the most anxious desire that the circumstances which have rendered these steps necessary may cease, and that he may be enabled to return to those relations with the Courts of Stockholm and Copenhagen, which existed between them, till that mutual good-understanding was interrupted by the present attempts to renew former pretensions.

GRENVILLE

**Reply of Count Wedel-Jarlsberg, Danish Envoy Extraordinary at London, to the Notification of Lord Grenville regarding the Embargo on Danish and Swedish Ships, January 16, 1801<sup>1</sup>**

The undersigned, Envoy Extraordinary from His Danish Majesty, will transmit this day with regret to his Court the official communication he had the honor to receive yesterday from Lord Grenville, upon the subject of the embargo laid upon the Danish vessels in the British ports.

While he waits until the orders of the King his master, relative to this offensive measure, arrive, we can not avoid protesting against the

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 220.

validity of the motives alleged in the said note, and against the justice of the consequences, which the British Government has conceived it could accredit against the Court of Copenhagen.

A difference which arose between the Courts of Petersburg and London during the negotiation, destined solely to the protection of a perfect neutrality in the north, has no relation whatever with that; and as His Imperial Majesty of all the Russias has caused to be published a formal declaration on the subject of the motives of the measures adopted on his part, Denmark finds in it a complete refutation of the argument advanced by the British Minister.

With respect to the principles of the northern Powers respecting the sacred rights of neutrality, they have not been abandoned. Russia, in her belligerent quality, has only suspended the application, and Denmark and Sweden have, by their convention of the 27th March 1794<sup>1</sup> (officially communicated to all the belligerent Powers), declared, in the face of all Europe, that their system of protection in favor of innocent commerce was invariable.

Hence it follows that his Danish Majesty only now renews ties which have not ceased to exist. The undersigned thinks himself, in consequence, authorized to protest, formally, against proceedings of so hostile a nature, which the King his master could not but have considered as an open and premeditated provocation, had not the communication been accompanied with the assurance that His Britannic Majesty still desires to maintain good harmony with Denmark; a desire which His Danish Majesty has constantly professed, and of which he has given the most unequivocal proofs.

The undersigned, who for a number of years has felicitated himself upon being the interpreter of the unalterable sentiments of the King his master, is deeply hurt that false impressions have just menaced the good understanding between the two Crowns. He wishes that he could still be the instrument of an explanation calculated to do away injurious doubts, and to prevent incalculable consequences to the interests of the reciprocal powers.

It is with these sentiments, and with those of perfect consideration, that he has the honor to renew to his Excellency Lord Grenville the homage of his respect.

WEDEL-JARLSBERG

*January 16, 1801.*

<sup>1</sup>*Ante*, p. 440.

**Reply of Baron Ehrenswärd, Swedish Minister at London, to the Notification of Lord Grenville regarding the Embargo on Danish and Swedish Ships, January 17, 1801<sup>1</sup>**

The undersigned, Minister Plenipotentiary of His Imperial Swedish Majesty, received the official notification, by which his Excellency Lord Grenville, first Minister of State, signified to the undersigned, that His Britannic Majesty had ordered an embargo to be laid on all the Swedish ships that should be found in the harbors within his dominions. So unexpected an event between Powers who were in relations of friendship towards each other, was received with astonishment by His Imperial Majesty, who was not only unconscious of having given His Britannic Majesty the least cause of complaint, but on the contrary was entitled to have demanded indemnification for repeated aggressions. Actuated by this reflection, he rather expected that the notification was transmitted with the view to bury his grievances in oblivion, than to give occasion for fresh ones, which should renew the remembrance of the past.

As the English Court has stated, as the ground of this notification, that a maritime convention was in contemplation, it would doubtless have acted with more justice, had it waited for an official communication from the Swedish Court, which it most assuredly would in proper time have received, of a convention, which is considered in so odious a point of view, as to urge it to an act of violence against a Court, whose connection with England nothing else could have disturbed. As the dispute between the Russian and English Courts related to the island of Malta, and the declaration of the Danish Court referred to the convention of 1780, the undersigned can see no just reason why the Swedish Court, which had given no cause of complaint to the English, and from which no other declaration was required than what related to the note of the 31st of December, which has just been received, should be attacked in so hostile a manner before any answer had been given to the insinuations contained in that note.

The undersigned, who imparted the contents of the note of his Excellency Lord Grenville to his Court, is obliged, in conformity to the orders of his master, to protest, as far as by the present act he can formally protest, against the embargo laid on the Swedish ships, and all loss or damage that may be thereby occasioned. He demands, in the most forcible and expressive terms, that, in pursuance of the stipu-

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 221.

lations of the treaty of 1661, the embargo may be taken off, the continuance of which can no otherwise be considered than as a designed and premeditated declaration of war on the part of England, as well by the detention of the convoy, as in respect to the affair at Barcelona. The undersigned, whom the expression of the desire of the British Court could not escape, observes, in the hostile determination by which it is accompanied, only to give His Imperial Swedish Majesty cause of complaint, as well by the detention of the convoy, as in respect to the affair at Barcelona. He wishes the British Court had conformed to the truth of its assurances by its actions, in which case this Court would have been actuated by corresponding sentiments.<sup>1</sup>

The undersigned has the honor, etc.

BARON VON EHRENSWARD

LONDON, *January 17, 1801.*

**Note of Lord Carysfort, British Minister at Berlin, to Count Haugwitz, Prussian Minister of State, regarding the Armed Neutrality League, January 27, 1801<sup>2</sup>**

As the undersigned Ambassador Extraordinary and Minister Plenipotentiary has been directed by his Court to communicate to the Prussian Ministry His Majesty's note, which, by command of His Majesty the King of Great Britain and Ireland, was presented to the Ministers of Denmark and Sweden, he can not discharge this commission without likewise expressing his sincere satisfaction in being authorized to declare how thoroughly His Majesty is convinced that Prussia can never have sanctioned the measures which have given rise to the above-cited note. Those measures openly disclose an intention to prescribe rules to the British Empire, on a subject of the greatest importance; to force those rules upon Great Britain, and for that end, before any of the Powers who have concurred in it have given the smallest intimation to His Majesty, to enter into a league, the object

<sup>1</sup>In consequence of the above official intelligence being received at Stockholm, all Swedish ships were immediately stopped from going to England, and an embargo was laid upon all English ships in the Swedish harbors.

<sup>2</sup>*Collection of State Papers*, vol. 11, p. 213.

of which is to renew pretensions which Great Britain at every time has considered hostile to its rights and interests, and so declared whenever an opportunity presented—pretensions which the Russian Court has abandoned, not only in fact, but which, by a treaty actually in force, Russia is bound to oppose, and the execution of which treaty His Majesty is entitled to insist upon. When a ship of war belonging to His Danish Majesty resisted by force the execution of a right, which the King of Great Britain and Ireland, by virtue of the clearest and most express stipulations of his treaties which the Court of Denmark had demanded, His Majesty, on that occasion, confined himself to the adoption of such measures as the protection of the trade of his subjects required to be given against that measure of hostility, which this conduct on the part of an officer bearing His Danish Majesty's commission, seemed to show. An amicable arrangement put an end to this dispute, and the King flattered himself, not only that all misunderstanding on that subject was removed, but amity between the two Courts was strengthened anew and confirmed. In this situation of affairs His Majesty must have learned with no less astonishment than concern, that the Court of Copenhagen was employed in negotiations to renew the hostile confederacy against Great Britain which took place in 1780, and that also great preparations were going on in the ports of Denmark. Under these circumstances the King must have been compelled to call for explanations from the Court of Denmark. At this moment he received information that a confederacy was signed at Petersburg, and the answer of the Danish Minister left no doubt respecting the nature and object of this convention, as he declared in the most express manner, "That these negotiations had in view the renewal of those relations which had been entered into between the same Powers in the years 1780 and 1781," adding, "that His Majesty the Emperor of Russia had proposed to the northern Powers the renewal of their connection in its original form." The engagements alluded to had for their object principles of maritime law which never had been recognized by the tribunals of Europe, and the contracting Parties mutually engaged to maintain them by force, and to compel by force other nations to adopt them. They are still more repugnant to the express stipulations of the treaties which subsist between the Courts of Stockholm and Denmark, and the British Empire. The convention which these engagements were to renew was negotiated at a time when the Court of Petersburg had adopted hostile measures

against the persons and property of His Majesty's subjects, and when nothing but the extraordinary moderation of the King could have authorized other Powers not to consider him as at open war with that Court. In such a state of things, nothing certainly could be more inconsistent with the ideas of neutrality, and nothing more distinctly indicate a hostile disposition, than that those engagements were not postponed till it was ascertained whether Russia was not to be considered as a belligerent Power. Such forbearance was the more to be expected, and particularly from the Court of Copenhagen, as, by an express article of the league of 1780, the Danish ports and havens in Norway were placed at the disposal of Russia for the purpose of facilitating the prosecution of hostilities out of the Baltic. When, therefore, the King was informed by one of the contracting Parties that the object of the negotiations which had been begun at Petersburg, without giving the least intimation, and which at last, according to the information received by the King, had terminated in the conclusion of a convention, was no other than to renew the former confederacy to press upon His Majesty a new code of law to which he had already refused his assent; and when moreover he had the most certain intelligence, and could no longer doubt, that the Powers of the Baltic, engaged in this transaction, were pursuing warlike preparations with the utmost activity; when one of those Powers had placed itself in a state of actual hostilities with His Majesty; no other alternative remained, but either to submit, or to adopt measures which were calculated to put an effectual stop to the hostile operation of a league, which, by the declaration of the Danish Court itself, was openly directed against His Majesty. Meanwhile His Majesty has not omitted on this occasion to display his wonted justice and good-will. Although he felt it necessary, for the maintenance of his rights, to secure some pledge against the hostile attacks which were meditated against his rights, yet he has taken the utmost care to guard against loss and injury to individuals. Firmly convinced that his conduct towards neutral States has been conformable to the recognized principles of laws, whose basis and sanction is to be found not in passing interests and momentary convenience, but in the general principle of justice; of laws which have been received and observed by the admiralty courts of all the maritime Powers of Europe; His Majesty does not yet forego the hope that the Courts of Stockholm and Copenhagen will not take upon them the responsibility that will fall upon the authors of the war; that particularly they will not expose themselves to that

responsibility for the introduction of innovations, the notorious injustice of which has induced those Powers by which they were first broached, to oppose, when they found themselves at war; innovations besides, which are expressly repugnant to those treaties which have been concluded with His Majesty. The step on which His Majesty has resolved must have long been foreseen. The British Government has never concealed that it considered the league of 1780 as hostile, and had never ceased that attention with which it watches over the rights of the nation. It immediately resisted the attempt to renew the principles which at the above-mentioned period had been agitated, and the undersigned declared to Count Haugwitz at the first conference he had with him on his arrival at Berlin, "That His Majesty would never submit to pretensions which were irreconcilable to the true principles of public law, and which strike at the foundations of the greatness and maritime power of his kingdoms." Still later, in the beginning of November, the undersigned had the honor to represent to his Excellency, as the Minister of a Power connected with His Majesty by the most intimate friendship, what disagreeable consequences must follow from the attempt of the northern Powers to press forward those pretensions. He has never ceased to renew this declaration, when, by the command of His Majesty, he has been the interpreter of that satisfaction given to the King by the repeated assurances of the friendship of His Majesty the King of Prussia, and of those constant sentiments of perfect justice of which His Majesty has never for a moment entertained a doubt. His Excellency Count Haugwitz will likewise easily recollect the time when the undersigned, ultimately convinced of the friendly intentions of the Prussian Government, communicated to him, by the command of His Britannic Majesty, the King's resolution to allow of no measures which had for their object to introduce innovations in the maritime law now in force, but, on the contrary, to defend that system in every event, and to maintain its entire execution as it had subsisted in all the Courts of Europe prior to the year 1780. If the Court of Denmark had announced in the most unequivocal manner, the real objects and contents of the engagements into which it had entered, the declaration of the Court, that Prussia was one of the Powers concerned in the negotiation, would have been sufficient to satisfy the King, and to prove to him that it could have no hostile views against his Government; and even still His Majesty is convinced that he may implicitly rely on the friendship of His Prussian Majesty.



It is true, that, in relation to Great Britain and Ireland, there can be no similarity between the northern Powers and Prussia. Those Powers are connected with His Majesty by the stipulations of mutual treaties, which are less favorable to their interests, and which more or less modify and soften the rigor of the general law; whereas between His Majesty the King of Great Britain and Prussia no treaty of commerce exists, and all intercourse between them is regulated by the general principles of the law of nations, and established usages. If, however, His Majesty were to consider his own sentiments, and the incessant wish he has shown to preserve the friendship of a monarch with whom he is connected by so many ties, he could not at all anticipate the possibility of a difference which might not easily and speedily be terminated by an amicable discussion. The repeated assurances of such sentiments on the part of His Prussian Majesty, which the undersigned has been empowered to transmit to his Court, confirm this agreeable anticipation; and the known principles which have constantly directed His Majesty the King of Prussia, do not tend to countenance the supposition that the latter has entered into the confederacy, or can enter into the confederacy, to support by force principles in common with other Powers, whose hostile views against His Britannic Majesty have been openly proved. Whatever sentiments the Prussian Government may entertain in regard to the new principles themselves, yet it is too just, and knows too well what sovereigns owe to their people, and to one another, to favor for a moment the design to employ force in order to induce His Britannic Majesty to acknowledge a code which the latter deems inconsistent with the honor and security of his Crown.

CARYSFORT

BERLIN, *January 27, 1801.*

**British Orders of Council respecting the Embargo on Russian,  
Danish, and Swedish Vessels<sup>1</sup>**

*At the Court of St. James's, the 28th of January, 1801; present, the  
King's Most Excellent Majesty in Council.*

Whereas, His Majesty, by and with the advice of his Privy Council, has been pleased to cause an embargo to be laid upon vessels belonging

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 222.

to the subjects of Russia, Denmark, and Sweden, now within, or which hereafter should come into any of the ports of the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said vessels: and whereas it has been represented to His Majesty, that the goods on board several of the vessels so detained by the embargo are the property of His Majesty's subjects, or the property of persons not being subjects of Russia, Denmark, or Sweden, His Majesty is thereupon pleased, by and with the advice of his Privy Council, to order, as it is hereby ordered, that all goods laden on board Russian, Danish, or Swedish vessels, now detained under the said embargo, and intended to be exported, shall be delivered to the disposal of the owners or their agents, upon affidavit made and produced to the officer in whose custody the said vessels may be, that the said goods were not at the time of shipment, nor are now, the property of the subjects of Russia, Denmark, or Sweden; and also, that all goods which, by virtue of licenses under His Majesty's sign manual, have been imported in vessels belonging to the subjects of Russia, Denmark, or Sweden, shall in like manner be forthwith delivered to the disposal of the owners or their agents, on their making and producing a like affidavit, and on sufficient proof that His Majesty's license to import the said goods had been obtained.

And His Majesty is hereby further pleased to order, that all goods which have been imported into this country, in Russian, Danish, or Swedish vessels, without license under His Majesty's sign manual, and which are now detained by the embargo, shall likewise be delivered to the owners or their agents, on affidavit being made, that such goods were not at the time of shipment, nor are now, the property of subjects of Russia, Denmark, or Sweden; and on their giving sufficient bail to abide adjudication, if any proceedings should be commenced against the said goods within two months from the date of such delivery; but in case no such proceedings should be commenced within two months from the date of such delivery, then the bond so given to be void: and the Right Honorable the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Judge of the High Court of Admiralty, are to give the necessary directions herein as to them may respectively appertain.

W. FAWKENER

**British Orders of Council respecting Payments to Subjects of Russia, Sweden and Denmark<sup>1</sup>**

*At the Court of St. James's, the 28th of January 1801; present, the King's Most Excellent Majesty in Council.*

Whereas His Majesty, by and with the advice of his Privy Council, has been pleased to cause an embargo to be laid upon vessels belonging to the subjects of Russia, Denmark, and Sweden, now within, or which hereafter should come into any of the ports of the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said vessels; His Majesty, by and with the advice of his Privy Council, is pleased to order, and it is hereby ordered, that no person residing within His Majesty's dominions do presume to pay any money or bills due or payable to, or on behalf of, any person or persons being subjects, or residing within the dominions of the Emperor of Russia, or of the Kings of Denmark or Sweden, or any of them, for the freight of merchandise imported in any Russian, Swedish, or Danish ship, which is detained under the said embargo, or which shall hereafter be brought into any of the ports of His Majesty's dominions, until His Majesty's pleasure shall be further known, or until other provision shall be made by law:—whereof all persons whom it may concern are to take notice, and govern themselves accordingly.

W. FAWKENER

**Note of Lord Carysfort to Count Haugwitz, regarding Relations between Great Britain and Russia, February 1, 1801<sup>2</sup>**

The undersigned, Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty, has the honor to address himself to Count Haugwitz, by command of his Court, in order to communicate to him the following particulars:

The spirit of patience and of moderation which prevails in the note of Lord Grenville to Count Kostopshin, will not escape the notice of his Excellency.

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 223.

<sup>2</sup>*Ibid.*, p. 224.

A solemn treaty between the two Powers had given the respective subjects of each a complete security for the prosecution of their trade; and even, in case of a rupture, it had been agreed, that not only no embargo should be laid, but that the subjects on both sides should have a whole year to carry away their effects, and to arrange their affairs in the country.

Notwithstanding these sacred stipulations, the ships of British subjects in the Russian ports are detained, and their property in an extraordinary manner, upon various pretexts, sequestered or sold. Their persons are likewise put under arrest, and a number of British sailors have been forcibly taken out of their ships, and been sent under guard and in the midst of winter into the interior of the country.

In consequence of these new acts of violence, Lord Grenville, Secretary of State for Foreign Affairs, received His Majesty's order to address a second note to Count Kostopshin, in which His Majesty stated his having appointed a commissary to superintend the safety and the wants of his unfortunate subjects; a circumstance which is usual even among the Powers that are actually at war. Lord Grenville in that paper likewise formally insisted on the execution of the treaty of 1793.<sup>1</sup> But, though he made the strong and just remonstrances which such circumstances demanded, yet His Majesty's constant disposition again to restore the former connection and good understanding between the two Crowns has been in vain.

His Britannic Majesty anticipates the sentiments which the King of Prussia will entertain when he is informed of the unheard-of and unjustifiable manner in which His Britannic Majesty's remonstrances were heard by the Court of St. Petersburg. The note of Count Kostopshin to Lord Grenville, of the 20th of December, O. S., a copy of which the undersigned is ordered to communicate to Count Haugwitz, will enable His Prussian Majesty to judge whether the undersigned is called upon to make any observations upon it.

The undersigned has received orders to make known to the Court of Berlin, that this conduct, on the part of the Emperor of Russia, has put an end to all correspondence between the Courts of London and St. Petersburg; and the connection between the extraordinary violence committed upon the persons and property of His Majesty's subjects, and with the conclusion of a hostile confederacy, which the Emperor of Russia has formed for the express and avowed purpose

<sup>1</sup>Treaty of Alliance of March 25, 1793. Martens, *Recueil*, 2d ed., vol. 5, p. 438

of introducing those innovations into the maritime code, which His Britannic Majesty has ever opposed, has at length produced a state of open war between Great Britain and Ireland and Russia.

It will not be useless to remark, that the Emperor of Russia, at the present crisis, can not be considered as a neutral Power, because he was at war with Great Britain before he himself was at peace with France.

The undersigned shall have done justice to the charge with which he is intrusted, when he declares, in the name of the King his master, that His Majesty, on weighing the present circumstances of Europe, is willing to forbear demanding from the Court of Prussia that succor which was stipulated by treaty, though he considers the *casus foederis* as completely coming within those circumstances in which they stand; and that His Britannic Majesty can not doubt that he will receive from his ally all the proofs of friendship which the events of this new war would have required.

The undersigned has the honor to be, etc.

CARYSFORT

BERLIN, *February 1, 1801.*

### Speech of His Britannic Majesty to Both Houses of Parliament, February 2, 1801<sup>1</sup>

MY LORDS AND GENTLEMEN :

At a crisis so important to the interests of my people, I derive great satisfaction from being enabled, for the first time, to avail myself of the advice and assistance of the Parliament of my United Kingdom of Great Britain and Ireland.

This memorable era, distinguished by the accomplishment of a measure, calculated to augment and consolidate the strength and resources of the empire, and to cement more closely the interests and affections of my subjects, will, I trust, be equally marked by that vigor, energy, and firmness, which the circumstances of our present situation peculiarly require.

The unfortunate course of events on the continent, and the conse-

<sup>1</sup>*Annual Register*, 1801, p. 254.

quences which must be expected to result from it, cannot fail to be matter of anxiety and concern to all who have a just feeling for the security and independence of Europe.

Your astonishment, as well as your regret, must be excited by the conduct of those Powers, whose attention, at such a period, appears to be more engaged in endeavors to weaken the naval force of the British Empire, which has hitherto opposed so powerful an obstacle to the inordinate ambition of France, than in concerting the means of mutual defense against their common and increasing danger.

The representations which I directed to be made to the Court of Petersburg, in consequence of the outrages committed against the ships, property, and persons of my subjects, have been treated with the utmost disrespect; and the proceedings of which I complained have been aggravated by subsequent acts of injustice and violence. Under these circumstances, a convention has been concluded by that Court, with those of Copenhagen and Stockholm; the object of which, as avowed by one of the contracting Parties, to renew their former engagements for establishing by force a new code of maritime law, inconsistent with the rights, and hostile to the interests of this country.

In this situation I could not hesitate as to the conduct which it became me to pursue. I have taken the earliest measures to repel the aggressions of this hostile confederacy, and to support those principles which are essential to the maintenance of our naval strength, and which are grounded on the system of public law, so long established and recognized in Europe. I have, at the same time, given such assurances as manifest my disposition to renew my ancient relations with those Powers, whenever it can be done consistently with the honor of my Crown, and with the just regard to the safety of my subjects.

You will, I am persuaded, omit nothing on your part that can afford me the most vigorous and effectual support, in my firm determination to maintain, to the utmost, against every attack, the naval rights and interests of my empire.

**Swedish Protest of February 7, 1801, on the subject of the alleged Illegal Proceedings on the Part of the British in the Harbor of Barcelona<sup>1</sup>**

By this public instrument of protest, be it known and made manifest to all people whom it may concern, that on the seventh day of February one thousand eight hundred and one, before me Thomas Pain, notary public, residing in the town and port of Dover, in the county of Kent, by lawful authority admitted and sworn, personally appeared Martin Rubarth, master of the ketch or vessel called *Hoffnung*, belonging to Barth, in Swedish Pomerania, of the burden of thirty-eight heavy Swedish lasts, or thereabouts, now lying in Dover harbor, and Jacob Christopher Glasen, and Johan Hendrick Heuer, mariners, also belonging to the said vessel, and upon their faith and honesty solemnly declared, and for truth affirmed and witnessed by the interpretation of Roelof Symons, of Dover aforesaid, gentleman; that the said vessel took in ballast at Oporto, and set sail and departed from thence in good order and condition, staunch and tight, on the 19th day of July last past, with the wind favorable, bound to the Mediterranean in search of freight, and proceeded, with easterly winds and variable weather, without any thing particular occurring, until the 23d day of August following, when they arrived and brought up in the road of Alicant, and were there put under quarantine, and on the 25th in the afternoon released from such restraint, when the said master made inquiries for freight, but none could be obtained, and the wind was at northeast and east-southeast, and they replenished their stock of water and got in readiness to proceed; and on the 28th weighed with a light breeze northerly, and steered for Barcelona; and on the 29th being under Cape Saint Martius, they were boarded by a Spanish privateer, and her crew took from the said vessel some stock fish and vegetables, and then quitted her, and they proceeded, with variable winds and weather, without any thing particular occurring, until the 3d day of September following, when, being between Sitger and the Castle de Fel, two other Spanish privateers rowed from the land towards the said vessel and hailed her, when the said master informed them they came from Alicant, and were destined to Barcelona; and the

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 225. This protest relates to the Swedish ship which was alleged, in the correspondence between Spain and Sweden, to have been made use of by the English for the purpose of capturing the two frigates at Barcelona. The master and people made this protest respecting that transaction. *Ibid.*

people on board the said privateer then inquired whether the said appearers had seen any English frigates or other vessels, which being answered in the negative, the said privateers quitted the said vessel, and steered southwest, and it fell calm; and on the 4th, at half past one o'clock in the afternoon, a breeze sprung up at west-southwest by west, the point of Cape de Fel bearing northwest by west, distant about one and a half German miles, and they steered along the land for Barcelona aforesaid, and about five o'clock in the afternoon saw, under the land of Lobregat, a line-of-battleship and a frigate with Spanish colors flying, and a boat and crew came from the shore, which the said appearers afterwards found belonging to the said line-of-battleship; and the crew speaking the English language, the said appearers found that the colors they had seen flying were false, and that the said ships of war were English; and the crew of the said boat then asked from whence the said vessel came, where bound, and what she was laden with? to which the said master replied, he came from Alicant with ballast, and intended going to Barcelona to procure a freight, and had brought a cargo of staves from Pillau to Oporto; whereupon the said boat's crew examined the said vessel's papers, and asked the said master if he had letters to any person in Spain, as, if he had, his said vessel would be a good prize; who replied, no such letters were on board; when the said boat and crew quitted the said vessel, and commanded the said master to lay his top-sail back, and keep after the said line-of-battleship, and that when they got on board, if a flag of any nation was hoisted, he might proceed on his voyage; but no such flag was hoisted, and the said two ships of war kept in for the land, and fired a shot at the said appearers' vessel, which obliged them to follow; and a boat with two officers and a great number of men came on board, and took the command and possession of the said vessel; when the said master asked what was their intention for so doing? and the said officers replied, that they did not know, but were obliged to follow their commander's orders; and toward evening, when it came on to be dark, they kept out to sea with the top-sail constantly laid back, and then many boats (to the best of the said appearers' recollection eight in number) came alongside, filled with armed officers and men, and they got on board the said vessel, at which the said appearers were greatly alarmed; and the said master asked the officer who commanded the man at the helm, what was intended to be done with the said vessel and her crew? who informed him, that the captain was on board, and



that the said master might go forward and inquire of him, which he accordingly did; and he commanded him to be silent, and spoke to another officer, who put a pistol to the said master's breast, and informed him, if he uttered a word to any man, a shot should end his existence; and they steering the said vessel for Barcelona road, the said master begged he might be allowed to get her anchors ready, which was permitted; and while the same was doing, one of the crew spoke a few words, when an officer immediately jumped up, and would have killed him, had he not fortunately been prevented by another officer, and between eight and nine o'clock in the evening they arrived in Barcelona road, and were hailed by a Spanish frigate riding at anchor, when the said master not being permitted to reply, one of the said English officers called out, "Sueco, Sueco," and a firing began from the said Spanish frigate at the said vessel, when the said English officers and people took to their boats and proceeded towards her, and the firing continuing, the said appearers put their helm a-lee, and ran into the cabin to prevent being shot, and soon afterwards the said firing ceased, when the said master and his crew got on the deck to save the sails, and bring the said vessel up; and as soon as they had let the anchor go, and hauled the foresails down, another firing commenced, by which Hans Peter Rubarth (the then mate of the said vessel, and brother to the said master) was shot through his left shoulder and arm, and fell to all appearance dead; at which the said appearers were much alarmed, and let the said vessel drive with the little cable she had out, and hastened to assist him into the cabin; and the said appearers discovered, that the said English officers and men captured in their said boats two Spanish frigates, in which they passed the said vessel, and the wind got more off the shore, and the firing continued, and the shots went over her abaft, and she drove into deep water; and, to prevent drifting out to sea, they let go both anchors, and made the sails fast, and, when the said two Spanish frigates had got out a considerable distance to sea, some Spanish gunboats came near, whereupon the said appearers were much alarmed, apprehending they would still consider the said vessel an enemy, and sink her, and therefore hoisted a light as a signal that they were friends; and the people on board the said gunboats inquired if they had any Englishmen left, when the said master informed them there were not, but that his mate was severely wounded; when one of the said gunboats came alongside, and her crew inquired if any other person was sick; and being

answered that all the others were in perfect health, an officer came on board, who seeing the said master weeping over his wounded brother, promised to acquaint Mr. Almgren, the Swedish consul at Barcelona aforesaid, of his distress, and to send people on board, to assist in weighing the anchors, and conduct the said vessel into the harbor of Barcelona aforesaid to obtain a surgeon; that on the 5th one came on board with four men, and she was towed into the said harbor, and moored in a proper place to perform quarantine, and continued under such restraint ten days, and was then released, and during the same the said master was obliged to keep the said four men, and also the surgeon and two other men, to watch the said mate; and the rigging, sails, and yawl, which were shot and much damaged, they repaired and stoppered as well as they could, and as soon as *pratic* was obtained, the said mate was taken on shore to the hospital at Barcelona aforesaid; and the said master having obtained freight on the 9th day of October last, sailed from Barcelona aforesaid, but the said mate continued so ill, he was obliged to be left in the said hospital. That in the latter part of the month of December following, the said master received a letter, dated the 14th day of the said month, from Daniel Christopher Hingst, of Barth aforesaid, the owner of the said vessel stating that the said mate died of his wounds in the hospital of Barcelona aforesaid, on the 29th day of the said month of October, leaving a widow and three infant children. And also the said appearers declared, that they have been informed, and verily believe, that the said line-of-battleship is called the *Minotaur*, Capt. T. Lewis, but they have not been enabled to learn the name of the said English frigate, or of her commander, and that they used their utmost endeavors for the preservation of the said vessel: that whatever damage or loss the same sustained was not occasioned by or through any neglect or default of them, or any of the then crew, or by reason of any defect or fault in the said vessel or her tackling, but merely by means of the said capture. Therefore the said master has desired a protest; wherefore I, the said notary, at his request, have solemnly protested, and by these presents do protest, against the said Captain T. Lewis, and the other officers and crew of the said ship *Minotaur*, and also the officers and crew of the said English frigate, and every other person and cause occasioning the said capture and detention, of and for all losses, costs, charges, damages, demurrages, suits, and expenses already and hereafter to be suffered and sustained thereby, to be allowed and recovered in time

and place convenient. Thus done and protested in Dover aforesaid, in the presence of James Moon and John Finnings, witnesses thereto, called and requested. In testimony of the truth thereof, the said appearers, interpreter, and witnesses, subscribed their names in the registry of me the said notary; and I the said notary have hereunto set my hand, and affixed my notarial seal. Dated the day and year first above written.

THO. PAIN

The said Martin Rubarth, Jacob Christopher Glasen, and Johan Henderick Heuer, were sworn on the Holy Evangelists to the truth of the aforegoing protest; the said Roelof Symons being first sworn faithfully to interpret to them, at Dover aforesaid, the said 7th day of February 1801, before me,

THO. PAIN

*A Master Extraordinary in Chancery*

*Hoffnung*, Martin Rubarth, Master. Protest dated February 7th, 1801.

### **Reply of Count Haugwitz to Lord Carysfort, February 12, 1801<sup>1</sup>**

The undersigned, State and Cabinet Minister, has laid before His Prussian Majesty the two notes which Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary from His Majesty the King of Great Britain and Ireland, has done him the honor to transmit to him on the 27th of January, and 1st of February last.<sup>2</sup>

The undersigned having it in commission to return an explicit and circumstantial answer, is under the necessity of informing Lord Carysfort, that His Majesty can not see without the utmost grief and concern, the violent and hasty measures to which the Court of London has proceeded against the northern naval Powers. Error alone can have given occasion to these measures, as the assertions in the note of the 27th sufficiently show. In that it is said, that the maritime alliance "has for its object, to annul the treaties formerly concluded with

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 229.

<sup>2</sup>*Anie*, pp. 564, 570.

England, and to prescribe laws to her, with respect to the principles of them; that the neutrality is only a pretext to impose these laws on her by force, and to establish a hostile alliance against her."

Nothing, however, is farther from the above-mentioned negotiation, than the principles here supposed. It is founded in justice and moderation, and the communication of a copy of the convention to such of the belligerent Powers as had the justice and patience to wait for the same, will prove this beyond the possibility of a denial.

When in the beginning of January the Minister of His Britannic Majesty officially proposed to the undersigned, the question, "whether the northern Courts had actually concluded the confederation which had been reported; and whether Prussia had acceded to it?"—the King conceived that the respect which sovereigns owe to each other, and the liberty possessed by every independent State to consult its own interests, without rendering an account to any other Power, authorized him to withhold any communications relative to himself and his allies; and contented himself with answering, that as he had seen, without interfering, the connections which England had entered into without consulting him, he considered himself entitled to the same confidence; and that if the King of Great Britain thought it his duty to support the rights and interests of his kingdom, His Prussian Majesty considered it as not less his duty to employ every means in the defense of the rights and interests of his subjects.

This answer might have sufficed a few weeks since; but in the situation in which affairs now are, the King thinks himself called upon to make an explicit declaration to the Court of London, relative to the spirit of the treaty, which has probably been attacked because it was not known, and which is far from having the offensive views of which the contracting Powers have been arbitrarily accused. They have expressly agreed, that their measures shall be neither hostile nor tend to the detriment of any country, but only have for their object the security of the trade and navigation of their subjects. They have been attentive to adapt their new connections to present circumstances. The strict justice of His Majesty the Emperor of Russia has, even in the detail, proposed modifications, which alone might be sufficient to indicate the spirit of the whole. It has since been determined, that the treaty shall not be prejudicial to those which had before been concluded with any of the belligerent Powers. It was also resolved, that this determination should be candidly communicated to those Powers, to

prove the purity of the motives and views of the contracting Parties. But England would not allow time for this; had she waited this confidential communication, she might have avoided those intemperate measures which threaten to spread the flames of war still wider.

Besides, it only depended on England, previously to draw satisfactory information from the correspondence with Denmark, if, instead of taking hold of two isolated passages, which Lord Carysfort, in his first note, extracted from Count Bernstorff's note of the 31st of December, the Court of London had listened to the solemn declaration which it contained: "That it could never have been supposed for a moment that Denmark had formed hostile projects against England, or plans that could not subsist together with the maintenance of harmony between the two Crowns, and that the Court of Copenhagen congratulated itself on finding an opportunity for contradicting, in the most positive manner, such unfounded reports." This plain and precise declaration agrees with the language which the undersigned had used more than once to Lord Carysfort, when speaking on that subject; and it can scarcely be conceived how the English Court, after that declaration had been received, could conclude from the note of the Minister of Denmark, "That the engagements of the contracting Powers had for their object the introduction of principles of naval rights, which had never been acknowledged by the tribunals of Europe, and which were of a hostile tendency against England." The conclusion is totally false, and, is not authorized even more by the contents of the answer of the Danish Court, than the other unmerited reproach made to it, "of having renewed an alliance of a hostile tendency against England, and of being actively employed in armaments with that view." Never were measures more evidently defensive, than the measures of the Court of Copenhagen, and their spirit will be misconceived still less, when it is considered what menacing demonstration that Court had experienced from the British Government, on occasion of the affair with the *Freya* frigate, before the above measures were resorted to. England's arbitrary conduct on this occasion is naturally explained by the pretensions which it had made for some time past, and which it has repeatedly renewed in the notes of Lord Carysfort, at the expense of every commercial and naval Power. The British Government has, in the present more than in any former war, usurped the sovereignty of the seas; and by arbitrarily framing a naval code, which it would be difficult to unite with the true principles of the law of nations, it

exercises, over the other friendly and neutral Powers, an usurped jurisdiction, the legality of which it maintains, and which it considers as an imprescriptible right, sanctioned by all the tribunals of Europe. The sovereigns have never conceded to England the privilege of calling their subjects before its tribunals, and of subjecting them to its laws, in cases where the abuse of power has got the better of equity, and which, alas! are but too frequent. The neutral Powers have always had the precaution of addressing to it the most energetic reclamations and protests, but experience has ever proved their remonstrances fruitless; and it is not surprising, that, after so many repeated acts of oppression, they have resolved to find a remedy against it, and for that purpose to establish a well-arranged convention, which fixes their rights, and which places them on a proper level even with the Powers at war.

The naval alliance, in the manner as it has just been consolidated, was intended to lead to this salutary end, and the King hesitates not to declare to His Britannic Majesty, that he has again found in it his own principles, that he is fully convinced of its necessity and utility, and that he has formally acceded to the convention, which has been concluded on the 16th of December, last year, between the Courts of Russia, Denmark, and Sweden.<sup>1</sup> His Majesty is, therefore, among the number of the contracting Parties, and has bound himself, in that quality, not only to take a direct share in all the events which interest the cause of the neutral Powers, but also, in virtue of his engagements, to maintain that connection by such powerful measures as the impulse of circumstances may require. The note of Lord Carysfort mentions a subject, to which His Majesty believes himself neither obliged to answer, nor even to have a right of entertaining an opinion with respect to it. There exist discussions between the Courts of Petersburg and London, which have by no means anything to do with the business which the latter has interwoven with it. But in the same measure in which the conduct of Prussia has hitherto been directed by the most blameless impartiality, the King's conduct will henceforth be directed by his regard for engagements, which in themselves are a proof of it. To stipulations which contain nothing hostile, and which the safety of his subjects required, he owes all the means which Providence has laid in his power. Unpleasant as the extremes may be to which England has proceeded, yet His Majesty doubts not the possibility of a speedy

<sup>1</sup>*Ante.* pp. 531, 537.

return to conciliating and peaceable dispositions, and he relies on the sentiments of equity which, on former occasions, he has had the advantage of meeting with in His Britannic Majesty.

It is only by revoking, and by entirely taking off the embargo, that affairs can be brought to their former situation; and it is for England to judge whether it ought to come to that resolution, in order to offer means to the neutral Powers for proceeding to those communications which they intended to make.

But while those measures exist, which have been resorted to from hatred against a common principle, and against an alliance which can no longer be shaken, the hostile resolution, which must be the consequence, will be the necessary result of the treaty; and the undersigned is ordered to declare to the Minister of His Britannic Majesty, that the King, while he expresses his concern at events of which he has not been the cause, will secretly fulfil the engagements prescribed to him by treaties. The undersigned, thus executing his orders, has the honor of assuring Lord Carysfort of his high esteem.

HAUGWITZ

*12th February, 1801.*

**Russian Proclamation interdicting the Transportation of Merchandise through Prussia, February 23, 1801<sup>1</sup>**

His Excellency the Civil Governor and Counselor of State, Chevalier von Richter, has received the following communication from the Commercial College of the Empire: "That His Imperial Majesty, being convinced by experience, that the productions and merchandise of his empire were exported by Prussia into England, His said Majesty has thought proper to order, that the transportation of these productions and merchandises through Prussia, whether by land or sea, shall be severely prohibited; and that, in order to accomplish this sovereign order, the most severe inspection shall take place, in conformity with the ukase of the 15th of December, 1800. The Commercial College has, in consequence, required all civil governors, first, to communicate

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 238.

through the medium of the magistrates, this order to the body of the merchants; secondly, to order the magistrates to instruct their brokers to insert, as a stipulation in their contract, whether made with foreign or Russian merchants, that the articles bought or sold shall not, under any pretence, be sent into Prussia by any channel. The two parties shall bind themselves to this. The magistrates are also bound to suffer none of the merchandises to pass thither on any pretence; and if any one shall refuse to obey this order, they are to seize the articles, and to send advice thereof forthwith "

In consequence, this order, after being transmitted by his Excellency the Civil Governor in Council, in order to its being correctly executed, is, by these presents, communicated to the knowledge of all the merchants in this city.

Dated RIGA, *February 12, 1801.*<sup>1</sup>

**Note of Count Wedel-Jarlsberg to the British Minister regarding the Embargo on Danish Vessels<sup>2</sup>**

LONDON, *February 23, 1801.*

The undersigned, having informed the King his master of the official communication of Lord Grenville, dated the 15th January, last,<sup>3</sup> has received orders to declare, that His Majesty is deeply affected at seeing the good understanding which has hitherto subsisted between Denmark and Britain, suddenly interrupted by the adoption of a measure as arbitrary as injurious on the part of Great Britain; and that he is not less afflicted and alarmed at seeing that measure justified by assertions and suppositions as unjust as ill founded. He remarks, with surprise, that, by confounding the cause of the measures taken in Russia against the interests of Great Britain, with the object of the convention relative to neutral navigation, the British Government evidently mixes two affairs which have not the least connection with each other. It is a subject of perfect notoriety, that the incident of the occupation of Malta by the troops of His Britannic Majesty, has alone been the occasion of the embargo on the British ships in the ports of Russia, and that the

<sup>1</sup>February 23, 1801, new style.

<sup>2</sup>*Ibid.*, p. 233.

<sup>3</sup>*Ante*, p. 559.



Ministers of the neutral Courts at Petersburg acted according to their full powers and instructions anterior to that event. The dispute relating to it is absolutely foreign to the Court of Copenhagen. It knows neither its origin nor foundation, or at least but very imperfectly, and its engagements with Petersburg have no relation whatever to it. The nature of these engagements has been solemnly declared to be only defensive; and it is inconceivable how general principles, conformable to every positive obligation, and modified according to the stipulations of treaties, could be justly considered as attacks on the rights or dignity of any State whatever. While the Powers who profess them require only their acknowledgment, the conflict of principles reciprocally maintained, can not be provoked but by those means which, operating as a denial of facts, place them in direct and inevitable opposition. The undersigned, by order of the King his master, calls the serious attention of the British Government to these reflections, and to these just and incontrovertible truths; they are analogous to the loyal sentiments of a sovereign, the ancient and faithful ally of Great Britain, who is not only incapable of offering, on his part, any injuries real or voluntary, but who has well-founded titles to a return of forbearance and justice. The prompt cessation of proceedings hostile to the interests of Denmark, is a circumstance to which His Majesty still looks forward with the confidence he has ever wished to entertain with regard to His Britannic Majesty; and it is in his name, and conformably to the instructions expressed on his part, that the undersigned insists on the embargo placed on the Danish vessels in the ports of Great Britain, being immediately taken off. By a constant series of moderation on the part of the King, the measures to which the outrageous proceedings of the British Government authorized him to have had recourse, have been suspended, His Majesty deeming it an act of glory to give, by this means, a decisive proof of the falsehood of the suspicions advanced against him, and of the doubts thrown on his intentions. But if, contrary to all expectation, the British Government persists in its violent resolutions, he will see himself, with regret, reduced to the urgent necessity of exerting those means which his dignity and the interests of his subjects will imperiously prescribe.

WEDEL-JARLSBERG

**Note of Count Wedel-Jarlsberg to Lord Hawkesbury, British Secretary of State for Foreign Affairs, regarding the Embargo on Danish Vessels<sup>1</sup>**

LONDON, March 4, 1801.

The undersigned has constantly reposed an unlimited confidence in the sentiments and moderation of His Britannic Majesty. He has consequently only endeavored, in the preliminary note of Lord Hawkesbury, dated the 25th of last month, in answer to his official note of the 23d,<sup>2</sup> to discover the expression of an assurance of these sentiments which should be transmitted to Copenhagen; and he is persuaded that the effect of them on the part of His Britannic Majesty will be manifested, by calling, in the most efficacious and satisfactory manner, the attention of the Government to the representations of His Danish Majesty, transmitted through the organs and offices of the undersigned. But as the adoption of conciliatory measures is constantly found suspended, and as, on the contrary, those of violence and injustice are daily accumulating, the undersigned can not acquiesce, in silence, in the continuation of this state of things, which only tends to bar the way to amicable explanations, and to compromise the dearest interests of each nation. He hastens, in consequence, to renew with earnestness, the demand made in the name of his Court, that the embargo placed on the Danish vessels should be immediately taken off. And, in expectation of a satisfactory answer, he has the honor to assure his Excellency Lord Hawkesbury of his respectful consideration.

WEDEL-JARLSBERG

**Note of Baron Ehrenswärd to Lord Hawkesbury regarding the Embargo on Swedish Vessels, March 4, 1801<sup>3</sup>**

The undersigned, Minister Plenipotentiary of His Swedish Majesty, has the honor to transmit to his Excellency Lord Hawkesbury, first

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 234. The reply of March 6, 1801, to this note is merely a formal acknowledgment. *Ibid.*, p. 235.

<sup>2</sup>For the official note of February 23, see *ante*, p. 583. The preliminary note of the 25th is merely a formal acknowledgment of the same. *Collection of State Papers*, *ibid.*, p. 234.

<sup>3</sup>*Ibid.*, p. 235.

Secretary of State of His Britannic Majesty, a printed copy of the naval convention concluded on the 16th December, 1800, between His Swedish Majesty and His Majesty the Emperor of all the Russias, as well as a printed copy of the naval regulations which the King has recently ordered to be drawn up.<sup>1</sup>

The undersigned, who, at the command of his Court, has the honor to make this communication to the Minister of His Britannic Majesty, has it likewise in commission expressly to declare, that Their Majesties, by the said naval convention, have reciprocally determined and settled those rights which, as neutral Powers, they believe themselves entitled to, and by the naval regulations have ascertained those duties, for the performance and observance of which, on the part of their subjects, they, as neutral Powers, make themselves answerable. The object of Their Majesties is to confirm and strengthen their rights of neutrality, and to promote the repose of their respective States, by the naval convention they have entered into; and nothing is farther from their intention than by such a step to provoke hostilities. The respect which is due to the rights of nations and to treaties, the consciousness that their own interests are inseparably united with the interests and the love of justice and peace, are the only motives by which Their Majesties have been actuated: they have, therefore, learnt, with the greatest astonishment, that the first news of the conclusion of this convention in England, has been the occasion of so violent a measure as that of laying an embargo on the Swedish ships.

So far from desiring to introduce any innovations with respect to the maritime State of Europe, by the assertion of their rights of neutrality, Their Majesties are sensible that it gives no power whatever where those rights were not acknowledged by former treaties. England has seen those treaties; England has seen those treaties executed; they were officially communicated to her, and she did not protest against them. In like manner it was, with regard to the conventions of 1780 and 1781; and the Ministry, who now proceed with so much violence, know that the partial renewal of that convention between Sweden and Denmark in 1794,<sup>2</sup> and the armament that followed, operated, during a period of three years, without ever being considered as grounds for hostilities; yet a similar convention is now deemed an hostile confederacy against England. A line of conduct so contradictory, proceeds

<sup>1</sup>*Ante*, pp. 531, 549.

<sup>2</sup>Treaty of March 27, 1794. *Ante*, p. 440.

not from the circumstance of the principles and claims of neutral rights having been now enforced; but it seems to have its foundation in that maritime system which England has established in the course of the present war. It appears also, that that Government, which Europe, from its pacific sentiments, has so often endeavored to convince of the injustice of its pretensions, has now determined to commence a war for the subjection of the sea, after it has rendered itself so renowned in the war undertaken for the freedom of Europe.

If the British Minister will refer to the conduct of England against Sweden, and the neutral Powers in general, during this war, he will find the real cause why His Swedish Majesty has been induced to believe that the formal alliance of several Powers, acting upon the same principles, would more effectually tend to convince the Court of London of the validity of those principles, than by any one Power renewing those reclamations which have hitherto been made in vain; at the same time His Majesty never supposed that such an alliance would be considered as an act of hostility. The British Minister complains that the Court of London was not before instructed of the intention of the respective Courts to renew the convention of 1780; but in the same note he states, that England had entered into engagements [during] this war with its allies respecting neutrals; thus the avowal of the British Minister is an answer to his own charge.

If His Majesty was not fully convinced of the innocence of his intentions, and if he was desirous of deviating from that line of moderation he has ever observed, he might make an invidious and censurable enumeration of the conduct of England; of the unpunished offenses of the commanders of English ships of war, even in Swedish harbors; of the inquisitorial examinations [to] which the captains and crews of the ships detained, as well in the West Indies as in England, have been subject; of the detention of the convoy in 1798; of the deceitful chicanery with which the proceedings of the courts of admiralty were accompanied; of the absolute denial of justice in many instances; and lastly, by the insult offered to the Swedish flag at Barcelona. His Swedish Majesty must, doubtless, state among the offenses of which he has cause to complain, that after one of his Ministers had been sent to the British Court, its aggressions, instead of being admitted and remedied, were justified. But he has sought no revenge; His Majesty wishes only to procure that security to his flag to which it is entitled. In consequence of this sentiment, the undersigned is em-

powered to declare, that the British Court shall acknowledge the rights of Sweden; that it shall do justice with regard to the convoys detained in 1798, as well as respecting the violence offered to the Swedish flag at Barcelona; and above all, that it shall take off the embargo which has been so unjustly laid on the Swedish ships. His Majesty will, with the greatest pleasure, see his ports again opened to the trade of England, and the ancient good understanding between the two Courts renewed. His Majesty, impressed with the dignity due to his empire, has, in consequence of the embargo laid upon the Swedish ships, placed a similar embargo on all English vessels in the harbors of Sweden.

As the pacific tendency of the present convention has been proved to a demonstration, His Majesty therefore hopes that no consideration, respecting any accidental occurrence which may have taken place between the ally of His Majesty the Emperor of Russia and the Court of London, will be introduced. The act of the convention itself proves, that its bases are the rights of neutrality, and that it is in its nature unconnected with every other subject of dispute.

While the undersigned Minister Plenipotentiary of His Swedish Majesty recommends the contents of this present note to the earnest consideration of the Minister of His Britannic Majesty, he has the honor to entreat that his Excellency Lord Hawkesbury will transmit him an answer, which he hopes will speak the sentiments of the King his master.

His Majesty has commanded the undersigned to present this to his Excellency. Should the conciliatory views with which it was dictated prove fruitless, it is His Majesty's opinion, that the presence of the undersigned at the Court of London will no longer be of any advantage.

The undersigned has the honor to assure his Excellency Lord Hawkesbury of his highest esteem.

THE BARON VON EHRENSWARD

LONDON, *March 4, 1801.*

### Reply of Lord Hawkesbury to Baron Ehrensward, March 7, 1801<sup>1</sup>

The undersigned, His Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 238.

of Baron Ehrensward, His Swedish Majesty's Minister Plenipotentiary, of the date of the 4th instant,<sup>1</sup> His Majesty has already repeatedly communicated his fixed unalterable determination to maintain those established principles of maritime law which have been found, by the experience of ages, best calculated to afford equal security to the just rights and interests, as well of neutral as of belligerent Powers.

The explanations attempted to be given to the present convention, have in no degree weakened the impression which the first perusal of it produced, that the views and motives of the contracting Powers were hostile to His Majesty's dominions; and this impression is most fully confirmed by the consideration, that the northern Courts have recurred to the principles of the convention of 1780 at a moment when the circumstances of the war and the relative state of the navies of the belligerent Powers, convert that which was pretended to be a measure of common equity to all countries, into an instrument of exclusive injury to Great Britain.

Under these circumstances, the embargo on Swedish vessels can be considered in no other view than as an act of just and necessary precaution, which will not be revoked so long as the Court of Stockholm continues to form a part of a confederacy which has for its object to impose by force on His Majesty a new system of maritime law, inconsistent with the dignity and independence of his Crown, and the rights and interests of his people.

The undersigned requests Baron Ehrensward will accept the assurances of his high consideration.

HAWKESBURY

DOWNING STREET, *March 7, 1801.*

**Manifesto of His Highness Prince Charles, March 28, 1801, regarding the Danish Occupation of the City of Hamburg<sup>2</sup>**

By the express command of His Majesty the King of Denmark and Norway, it is hereby declared:

The attacks made by the English Government, in opposition to all the principles of the laws of nations, against the navigation and trade

<sup>1</sup>*Ante*, p. 585.

<sup>2</sup>*Collection of State Papers*, vol. 11, p. 242.

of those Powers that have confederated together for the purpose of securing and maintaining the rights of neutral flags; and the arbitrary and powerful measures adopted by that Government, notwithstanding the most pressing and continued remonstrances; have imposed on these Powers the disagreeable necessity of taking every previous step that may serve to bring the said Government to a more just way of thinking.

As the exclusion of the English navigation and trade from the Elbe, must be an effectual means of promoting this object; and as the possession, for a time, of the Imperial city of Hamburg has been considered as unavoidably necessary for that purpose; His Danish Majesty, unwilling as he is to adopt a measure of this kind, has been obliged to give way to a crowd of imperious circumstances; and consequently has charged me to carry the measure into execution with the troops under my command.

Conformably to the positive orders enjoined me, I will most vigilantly take care, that the strictest discipline shall be observed by the troops that enter the city, while they remain there; and that the tranquillity, the property, and municipal rights of the inhabitants shall not only be undisturbed and unmolested, but that the same shall be most carefully preserved and guarded for them. I expect, therefore, that all persons shall conduct themselves peaceably and friendly towards the royal troops commanded by me; and that nobody shall find fault with that necessary severity which must be put in force in case of a contrary behavior.

CHARLES, PRINCE OF HESSE

PINNEBERG, *March 28, 1801.*

**Proclamation of the Senate of Hamburg regarding the Danish Occupation of the City, March 29, 1801<sup>1</sup>**

As circumstances of a political nature have created the necessity for the Imperial Danish troops to remain in the neighborhood of this city, and as nothing is to be apprehended on that account, either with respect to the freedom and independence of the State, or the property and safety of the inhabitants; therefore the most illustrious Senate exhort

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 242.

all citizens and inhabitants to confide in their pressing intercessions upon the occasion; and that, with the assistance of the College of Citizens, they will do their utmost for the advantage and safety of the State. And the most illustrious Senate trust that every one will demean himself peaceably and obediently, and especially with decency and propriety towards the foreign military; by which alone the general safety can be ensured, and those inconveniences avoided, to which any inconsiderate and opposite conduct would inevitably subject the city.

Given at our Senate-house, the 29th March 1801.

**Ordinance of the King of Denmark laying an Embargo upon English Vessels, March 29, 1801<sup>1</sup>**

With, Christian VII etc., make known: Whereas all the measures and friendly efforts to secure the lifting of the embargo placed upon the vessels and goods of our subjects within English ports, have been unsuccessful, we have found ourselves under the necessity of ordering by the present notification, that all vessels and goods belonging to subjects of the British Government being within our ports, be immediately seized and held. In order to put this embargo into execution, it shall devolve upon all the magistrates in his cities and in the rural regions to extend armed assistance, in the most effective manner, to the employes of the customs and others who may discover such vessels and goods. With regard to keeping the seized vessels and goods in good condition, the magistrates and the employes of the customs are ordered to do all that which is necessary, and subsequently, measures shall be adopted with regard to the care to be bestowed upon the crews. Everyone shall conform to the foregoing.

Given at our royal residence in Copenhagen, March 29, 1801.

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 7, p. 236. These reprisals and the departure of the English ministers were soon followed by effective hostilities, and the English fleet, having forced the entrance to the Sound, March 30, there took place, April 2d, a bloody battle before Copenhagen which ended during the same day, in Europe, the war between these two Powers. A first armistice concluded for the period of twenty-four hours, then extended indefinitely, was followed, April 9th, by a truce for the period of fourteen weeks. The Copenhagen Court has had officially published the substance of the negotiations which preceded that armistice. *Ibid.*, p. 237.



**Declaration of the King of Prussia, March 30, 1801, to the Royal and Electoral College at Hanover and to the Commanders of the Hanoverian Troops regarding Measures to be taken in Defense of the Armed Neutrality<sup>1</sup>**

In consequence of the oppressions which neutral navigation and commerce have sustained on the part of the English navy, since the commencement of this war, the different Powers therein interested could no longer abstain, after so many ineffectual complaints, from protecting their violated rights with a greater degree of energy.

The result was the convention formed on the 16th of December, 1800, at St. Petersburg, between Russia, Denmark and Sweden,<sup>2</sup> the just and moderate principles of which had formerly been adopted and followed by the Court of London itself; and His Majesty the King of Prussia, who had likewise felt this violence injurious to his States and his flag, did not hesitate to accede to that treaty.

The contracting Courts were on the point of communicating to the belligerent Powers the convention they had agreed to, and of forming arrangements with them, when England, by an unexpected proceeding, disconcerted this amicable design, by laying an embargo on all the vessels of the naval Powers of the north in her ports, and thus declaring herself their enemy.

It might have been expected that His Majesty the King of Prussia would not regard this conduct with satisfaction or indifference. Accordingly he soon after transmitted to the Court of London the declaration already known, of the 12th of February,<sup>3</sup> formally and publicly avowing his accession to the convention of St. Petersburg, and indicating, at the same time, the means by which the differences that had taken place might be accommodated, and a total rupture avoided.

But, instead of adopting the proposed expedient, England passed over in silence the answer transmitted to Lord Carysfort, at Berlin. She continued to treat the flags of the north in a hostile manner; and in a note transmitted by the Secretary of State, Lord Hawkesbury, to the Swedish Envoy, Baron Ehrenswärd, dated the 7th of March,<sup>4</sup> at London, she has once more manifested those false principles which have been so often refuted:

<sup>1</sup>*Collection of State Papers*, vol. 11, p. 243.

<sup>2</sup>*Ante*, pp. 531, 537.

<sup>3</sup>*Ante*, p. 578.

<sup>4</sup>*Ante*, p. 588.

Under these circumstances, the embargo on Swedish vessels can be considered in no other view than as an act of just and necessary precaution, which will not be revoked, so long as the Court of Stockholm continues to form a part of a confederacy, which has for its object, to impose by force on His Majesty a new system of maritime law, inconsistent with the dignity and independence of his Crown, and the rights and interests of his people.

A similar declaration was soon after sent to the Court of Denmark, adding, that she must abandon the coalition of the north, and enter into a separate negotiation with England. After receiving a negative answer, the English Chargé d'Affaires, Drummond, and the Plenipotentiary Extraordinary, Vansittart, left Copenhagen on the same day; and in the mean time the English fleet, under the orders of Admiral Sir Hyde Parker, destined for the Baltic Sea, had actually arrived on the coasts of Zealand.

It appears from all these events, that the Court of London has no inclination to desist from her inadmissible demands, and accept the proposed means of amicable conciliation. His Majesty the King of Prussia therefore feels himself compelled, in conformity to the obligations he has contracted, to take the most efficacious measures in support of the convention attacked, and to retaliate for the hostile proceedings against it: for this purpose, he will not only shut the mouths of the Elbe, and Weser, and the Ems, but likewise take possession of the States belonging to His Majesty the King of England, as Elector of Brunswick Lüneberg, situate in Germany.

His Majesty the King of Prussia accordingly demands and expects from the Electoral College of Privy Councilors at Hanover, and from the Board of Generals, that they will submit to this disposition without delay or reply; and that they will voluntarily obey the orders which shall be given relative to the occupation of the electorate by the Prussian troops, and likewise with respect to the electoral countries. His Majesty principally demands that the Hanoverian corps which has hitherto occupied part of the northern line of demarcation, shall be disarmed and be disbanded, with a proportional part of the other troops. His Majesty requires that the generals and other officers shall engage in writing, not to serve against His Majesty the King of Prussia; but, on the contrary, to follow strictly his orders until the present affair be brought to a conclusion. The troops which shall continue embodied, shall be cantoned, part on the right bank of the Leine, and part on the

left bank of the Aller, and behind the Luhe as far as the Elbe, where they shall remain distributed among the towns of Hanover, Gifhorn, Belgern, Lüneberg, and the other smaller towns and villages of that district. All the other places, including the fortress of Hameln, shall be delivered up to the Prussian troops, under the orders of Lieutenant General Klein.

His Majesty declares, at the same time, that the Prussian troops shall be subsisted at the expense of the electoral territory, commencing from the end of the month of April. His Majesty has sent his Cabinet Minister, Count Schullenburg, to notify the present declaration to the Electoral College of Privy Councilors and commanders of troops. In these circumstances, all connection between the Electoral College and His Majesty the King of England will cease; and the authorities are, in consequence, responsible to His Majesty the King of Prussia for their administration and the revenues. In case, as it is to be hoped, of a voluntary submission, His Majesty is disposed, and ready to promise solemnly, as well to the nobility as to the burgesses and to all the inhabitants of the electorate, the complete enjoyment of tranquillity, and the security of their property.

But, on the contrary, should the Government and the general officers attempt to impede the execution of the measures taken, and oppose the entrance of the Prussian troops, His Majesty would be obliged, though against his inclination, to revoke his promises, and to treat the Electoral States in a hostile manner. The civil and military officers are therefore responsible for the fatal consequences which may in this case result from their conduct. For this reason His Majesty advises them to submit to this summons, and to prevent the rigorous measures which will inevitably be adopted in case of a refusal.

By order of His Majesty,

BERLIN, *March 30, 1801.*

HAUGWITZ

**Instructions from the British Admiralty to Admiral Dickson, regarding the Seizure of Swedish Vessels in the Harbor of Oster Risoer, April 3, 1801<sup>1</sup>**

Whereas we transmitted to Lord Grenville late one of His Majesty's principal Secretaries of State your letter to our Secretary dated the

<sup>1</sup>*Thorvald Boye, op. cit., p. 359.*

16 of last month with letter which accompanied it from Captain John Hampstead commander of His Majesty's ship *Squirrel* representing that in pursuance of the orders he had received from you to proceed to the coast of Norway and knowing there were several vessels in the harbor of Oster Risoer he had entered the said harbor and on the next morning had brought away the Swedish vessels named in the margin; and whereas Lord Hawkesbury (who hath succeeded his Lordship) hath by his letter of the 27 instant signified to us His Majesty's pleasure that the four ships and vessels above mentioned belonging to the subjects of His Swedish Majesty should be immediately released and be allowed to return with their masters and crews to the ports from whence they were brought away; we do in pursuance of His Majesty's pleasure signified to us as above mentioned hereby require and direct you to cause the said Swedish vessels to be forthwith released and allowed to return to the ports from whence they were brought away and to furnish them with the necessary passports for that purpose and also to signify to Captain Hampstead His Majesty's disapprobation of his proceedings on that occasion in the strongest terms.

Given the 3 April, 1801.

W. ELIOT  
I. IRONBRIDGE  
J. MARKHAM

To

ARCHIBALD DICKSON, ESQ.,

*Admiral of the Blue No. Yarmouth.*

### Convention between Great Britain and Russia relative to Neutral Trade, June 17, 1801<sup>1</sup>

In the Name of the Most Holy and Indivisible Trinity.

The mutual desire of His Majesty the Emperor of all the Russias, and of His Majesty the King of the United Kingdom of Great Britain and Ireland, being not only to come to an understanding between themselves with respect to the differences which have lately interrupted the good understanding and friendly relations which subsisted

<sup>1</sup>Translation. For the French text, see *post*, p. 688.

between the two States; but also to prevent, by frank and precise explanations upon the navigation of their respective subjects, the renewal of similar altercations and troubles which might be the consequence of them; and the common object of the solicitude of Their said Majesties being to settle, as soon as can be done, an equitable arrangement of those differences, and an invariable determination of their principles upon the rights of neutrality, in their application to their respective monarchies, in order to unite more closely the ties of friendship and good intercourse, of which they acknowledge the utility and the benefits, have named and chosen for their plenipotentiaries, viz.:

His Majesty the Emperor of all the Russias, Sieur Nikita Count de Panin, his Privy Councilor, Minister of State for the Department of Foreign Affairs, present Chamberlain, Knight Grand Cross of the Order of St. Alexander-Newsky, and of St. Anne of the First Class, of that of St. Ferdinand, and of Merit, of the Red Eagle, and of St. Lazarus; and His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, His said Majesty's Privy Councilor and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; who, after having communicated their respective full powers, and found them in good and due form, have agreed upon the following points and articles:

#### ARTICLE 1

There shall be hereafter between His Imperial Majesty of all the Russians and His Britannic Majesty, their subjects, the States and countries under their dominion, good and unalterable friendship and understanding, and all the political, commercial, and other relations of common utility between the respective subjects, shall subsist as formerly, without their being disturbed or troubled in any manner whatever.

#### ARTICLE 2

The Emperor of all the Russias and His Britannic Majesty declare, that they will watch over the most rigorous execution of the prohibitions against the trade of contraband of their subjects with the enemies of either of the two high contracting Parties.

## ARTICLE 3

His Imperial Majesty of all the Russias and His Britannic Majesty, having resolved to place under a sufficient safeguard the freedom of commerce and navigation of their subjects, in case one of them shall be at war, whilst the other shall be neuter, have agreed:

1. That the ships of the neutral Power may navigate freely to the ports, and upon the coasts of the nations at war.

2. That the effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property; and it is agreed not to comprise under the denomination of the latter the merchandise of the produce, growth, or manufacture of the countries at war, which should have been acquired by the subjects of the neutral Power, and should be transported for their account, which merchandise can not be excepted in any case from the freedom granted to the flag of the said Power.

3. That in order to avoid all equivocation and misunderstanding of what ought to be considered as contraband of war, His Imperial Majesty of all the Russias and His Britannic Majesty declare, conformably to Article 11 of the treaty of commerce concluded between the two Crowns, on the 10th (21st) February, 1797,<sup>1</sup> that they acknowledge as such the following articles only, viz.: cannons, mortars, firearms, pistols, bombs, grenades, balls, bullets, firelocks, flints, matches, gunpowder, saltpetre, sulphur, cuirasses, pikes, swords, sword-belts, knapsacks, saddles and bridles, excepting, however, the quantity of the said articles which may be necessary for the defense of the ship, and those who compose the crew; and all other articles whatever not enumerated here shall not be reputed warlike and naval stores, nor be subject to confiscation, and of course shall pass freely, without being subjected to the smallest difficulty, unless they be considered enemy's property in the sense above specified.

It is also agreed, that that which is stipulated in the present article shall not be prejudicial to the particular stipulations of one or the other Crown with other Powers, by which articles of a similar kind should be reserved, prohibited, or permitted.

4. That in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the dispositions of the Power which attacks it with ships, stationary or sufficiently near, an evident danger in entering.

<sup>1</sup>*Ante*, p. 445.

5. That the ships of the neutral Power shall not be stopped but upon just causes and evident facts: that they be tried without delay, and that the proceeding be always uniform, prompt, and legal.

In order the better to ensure the respect due to these stipulations, dictated by the sincere desire of conciliating every interest, and to give a new proof of their uprightness and love of justice, the high contracting Parties enter here into the most formal engagement to renew the severest prohibitions to their captains, whether of ships of war or merchantmen, to take, keep or conceal, on board their ships, any of the articles which, in the terms of the present convention, may be reputed contraband, and respectively to take care of the execution of the orders which they shall have published in their admiralities, and wherever it shall be necessary.

#### ARTICLE 4

The two high contracting Parties, wishing also to prevent all subject of dissension in future, by limiting the right of search of merchant ships going under convoy, to those cases only, in which the belligerent Power might experience a real prejudice by the abuse of the neutral flag, have agreed:

1. That the right of searching merchant ships belonging to the subjects of one of the contracting Powers, and navigating under convoy of a ship of war of the said Power, shall only be exercised by ships of war of the belligerent Party, and shall never extend to letters of marque, privateers, or other vessels, which do not belong to the imperial or royal fleet of Their Majesties, but which their subjects shall have fitted out for war.

2. That the proprietors of all merchant ships belonging to the subjects of one of the contracting Sovereigns, which shall be destined to sail under convoy of a ship of war, shall be required, before they receive their sailing orders, to produce to the commander of the convoy, their passports and certificates, or sea letters, in the form annexed to the present treaty.<sup>1</sup>

3. That when such ship of war, having under convoy merchant ships, shall be met with by a ship or ships of war of the other contracting Party, who shall then be in a state of war, in order to avoid all disorder, they shall keep out of cannon shot, unless the state of the sea, or the place of meeting, render a nearer approach necessary; and

<sup>1</sup>*Post*, p. 602.

the commander of the ship of the belligerent Power shall send a boat on board the convoy, where they shall proceed reciprocally to the verification of the papers and certificates that are to prove on one part, that the ship of war is authorized to take under its escort such or such merchant ships of its nation, laden with such a cargo, and for such a port; on the other part, that the ship of war of the belligerent Party belongs to the imperial or royal fleet of Their Majesties.

4. This verification made, no search shall take place, if the papers are found in form, and if there exists no good motive for suspicion. In the contrary case, the commander of the neutral ship of war (being duly required thereto by the commander of the ship or ships of war of the belligerent Power) is to bring to and detain his convoy during the time necessary for the search of the ships which compose it, and he shall have the faculty of naming and delegating one or more officers to assist at the search of the said ships, which shall be done in his presence, on board each merchant ship, conjointly with one or more officers appointed by the commander of the ship of the belligerent Party.

5. If it happen that the commander of the ship or ships of the Power at war, having examined the papers found on board, and having interrogated the master and crew of the ship, shall see just and sufficient reason to detain the merchant ship in order to proceed to an ulterior search, he shall notify such intention to the commander of the convoy, who shall have the power to order an officer to remain on board the ship thus detained, and to assist at the examination of the cause of her detention. The merchant ship shall be carried immediately to the nearest and most convenient port belonging to the belligerent Power, and the ulterior search shall be carried on with all possible diligence.

#### ARTICLE 5

It is in like manner agreed, that if any merchant ship thus convoyed should be detained without just and sufficient cause, the commander of the ship or ships of war of the belligerent Power shall not only be bound to make to the owners of the ship and of the cargo, a full and perfect compensation for all the losses, expenses, damages, and costs, occasioned by such a detention, but shall moreover undergo an ulterior punishment for every act of violence, or other fault which he may have committed, according as the nature of the case may require. On



the other hand the convoying ship shall not be permitted, under any pretext whatsoever, to resist by force the detention of the merchant ship or ships by the ship or ships of war of the belligerent Power; an obligation to which the commander of a ship of war with convoy is not bound to observe towards letters of marque and privateers.

#### ARTICLE 6

The high contracting Parties shall give precise and efficacious orders, that the judgments upon prizes made at sea shall be conformable with the rules of the most exact justice and equity; that they shall be given by judges above suspicion, and who shall not be interested in the affair in question. The government of the respective States shall take care that the said decisions shall be speedily and duly executed, according to the forms prescribed. And in case of an unfounded detention, or other contravention to the regulations stipulated by the present article, the owners of such ship and cargo shall be allowed damages proportioned to the loss occasioned thereby. The rules to observe for these damages, and for the case of unfounded detention, as also the principles to follow for the purpose of accelerating the process, shall be the matter of additional articles, which the contracting Parties agree to settle between them, and which shall have the same force and validity as if they were inserted in the present act. For this effect, Their Imperial and Britannic Majesties mutually engage to put their hand to the salutary work, which may serve for the completion of these stipulations, and to communicate to each other, without delay, the views which may be suggested to them by their equal solicitude to prevent the least grounds for dispute in future.

#### ARTICLE 7

To obviate all the inconveniences which may arise from the bad faith of those who avail themselves of the flag of a nation without belonging to it, it is agreed to establish for an inviolable rule, that any vessel whatever, in order to be considered as the property of the country, the flag of which it carries, must have on board the captain of the ship, and one-half of the crew of the people of that country, and the papers and passports in due and perfect form; but every vessel which shall not observe this rule, and which shall infringe the ordinances published on that head, shall lose all rights to the protection of the contracting Powers.

## ARTICLE 8

The principles and measures adopted by the present act shall be alike applicable to all the maritime wars in which one of the two Powers may be engaged, whilst the other remains neutral. These stipulations shall in consequence be regarded as permanent, and shall serve for a constant rule to the contracting Powers in matters of commerce and navigation.

## ARTICLE 9

His Majesty the King of Denmark, and His Majesty the King of Sweden, shall be immediately invited by His Imperial Majesty, in the name of the two contracting Parties, to accede to the present convention, and at the same time to renew and confirm their respective treaties of commerce with His Britannic Majesty; and His said Majesty engages, by acts which shall have established that agreement, to render and restore to each of these Powers, all the prizes that have been taken from them, as well as the territories and countries under their Dominion, which have been conquered by the arms of His Britannic Majesty since the rupture, in the state in which those possessions were found at the period at which the troops of His Britannic Majesty entered them. The orders of His said Majesty for the restitution of those prizes and conquests shall be immediately expedited after the exchange of the ratifications of the acts by which Sweden and Denmark shall accede to the present treaty.<sup>1</sup>

## ARTICLE 10

The present convention shall be ratified by the two contracting Parties, and the ratifications exchanged at St. Petersburg in the space of two months at furthest from the day of the signature.

In faith of which, the respective plenipotentiaries have caused to be made two copies thereof, perfectly similar, signed with their hands, and have caused the seal of their arms to be affixed thereto.

Done at St. Petersburg, the 5/17 June, 1801.

[L. S.] N. CTE. DE PANIN

[L. S.] ST. HELENS

<sup>1</sup>For the acts of accession, see *post*, p. 606 and note.

FORMULA OF THE PASSPORTS AND SEA LETTERS WHICH ARE TO BE DELIVERED, IN THE RESPECTIVE ADMIRALTIES OF THE STATES OF THE TWO HIGH CONTRACTING PARTIES, TO THE SHIPS AND VESSELS WHICH SHALL SAIL FROM THEM CONFORMABLE TO ARTICLE 4 OF THE PRESENT TREATY

Be it known that we have given leave and permission to N , of the city or place of N , master and conductor of the ship N , belonging to N , of the port of N , of tons or thereabouts, now lying in the port or harbor of N , to sail from thence to N , laden with N , on account of N , after the said ship shall have been visited before its departure in the usual manner by the officers appointed for that purpose; and the said N , or such other as shall be vested with Powers to replace him, shall be obliged to produce in every port or harbor which he shall enter with the said vessel to the officers of the place, the present licence, and to carry the flag of N , during his voyage.

In faith of which, etc.

SEPARATE AND SECRET ARTICLE

His Britannic Majesty, desiring to give unequivocal proof of the confidence which he reposes in the magnanimous efforts of His Majesty the Emperor of all the Russias to restore peace in the north and in the disposition shown by the Courts of Stockholm and Copenhagen, giving grounds for the hope that these efforts will be crowned by prompt and happy results, His said Britannic Majesty binds himself to issue orders at once for his squadron to return with the least possible delay from the Baltic to the North Sea.

This separate and secret article shall have the same force and effect, etc.

In faith whereof, etc.

Done at St. Petersburg, June 5/17, 1801.

[L. S.] N. COUNT PANIN

[L. S.] ST. HELENS

SEPARATE ARTICLE 1

The pure and magnanimous intentions of His Majesty the Emperor of all the Russias having already led him to restore the ships and

goods of British subjects, which had been sequestered in Russia, His said Majesty confirms this disposition in its entirety and His Britannic Majesty likewise agrees to issue orders immediately to free from sequestration Russian, Danish, and Swedish property detained in the ports of Great Britain.

The better to prove his sincere desire to settle in a friendly way the differences between Great Britain and the Courts of the north, and to prevent any future incident from hindering this salutary undertaking, His Britannic Majesty agrees to issue orders to the commanders of his land and naval forces, extending for a period of three months from this date the armistice at present existing with the Courts of Sweden and Denmark, and His Majesty the Emperor of all the Russias, impelled by the same motives, agrees in the name of his allies that this armistice shall be continued by them likewise for the above-mentioned period.

This separate article shall have the same force and effect, etc.

In faith whereof, etc.

Done at St. Petersburg, June 5/17, 1801.

[L. S.] N. COUNT PANIN

[L. S.] ST. HELENS

#### SEPARATE ARTICLE 2

The differences and misunderstandings which existed between His Majesty of all the Russias and His Majesty the King of the United Kingdom of Great Britain and Ireland having thus been terminated, and harmony and good understanding having been restored for the future, Their said Majesties confirm anew by the present convention the treaty of commerce of February 10/21, 1797,<sup>1</sup> all of whose stipulations are here reiterated to be maintained in their entirety.

This separate article shall have the same force and effect, etc.

In faith whereof, etc.

Done at St. Petersburg, June 5/17, 1801.

[L. S.] N. COUNT PANIN

[L. S.] ST. HELENS

<sup>1</sup>Articles 10, 11 and 12 printed *ante*, p. 445.

**Additional Articles and Declaration to the Convention of June 17, 1801, between Great Britain and Russia relative to Neutral Trade, October 20, 1801<sup>1</sup>**

ADDITIONAL ARTICLES

Whereas by the 6th article of the convention concluded the 5/17th June, 1801, between His Imperial Majesty of all the Russias and His Britannic Majesty, it was stipulated that the two high contracting Parties should mutually agree on some additional articles, which should fix the regulations and principles to be observed, as well for accelerating the judicial proceedings upon captures made at sea, as for the damages which should be allowed to the owners of neutral ships and cargoes, in cases of unfounded detention, Their said Majesties have named and authorized for this purpose, namely:

His Majesty the Emperor of all the Russias, the Sieur Alexander, Prince de Kourakin, his Vice Chancellor, Actual Privy Councilor, Minister of the Council of State, Actual Chamberlain, Grand Chancellor of the Sovereign Order of St. John of Jerusalem, and Knight of the Russian Orders of St. Andrew, of St. Alexander-Newsky, and of St. Anne of the First Class; of those of Prussia, of the Black and Red Eagles; of those of Denmark, of the Dannebrog, and of the Perfect Union; and Grand Cross of the Sovereign Order of St. John of Jerusalem; and the Sieur Victor Count de Kotschoubey, his Actual Privy Councilor Minister for the Department for Foreign Affairs, Senator, Actual Chamberlain, and Knight of the Orders of St. Alexander-Newsky, of St. Vladimir of the Second Class; and Commander of the Sovereign Order of St. John of Jerusalem; and His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, a Peer of the said United Kingdom, one of His said Majesty's Most Honorable Privy Council, and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias: who, in virtue of their respective full powers, have agreed upon the following articles:

ARTICLE 1

In case of unfounded detention or other contravention of the established regulations, the owners of the vessel and cargo so detained

<sup>1</sup>Translation. For the French text, see Appendix, pp. 695, 696.

shall be allowed compensation for each day's demurrage, proportionate to the loss they shall have sustained, according to the freight of the said ship, and the nature of its cargo.

#### ARTICLE 2

If the Ministers of one of the high contracting Parties, or any other persons accredited by the same to the belligerent Power, should remonstrate against the sentence which shall have been passed by the respective courts of admiralty upon the said captures, appeal shall be made in Russia, to the directing Senate, and in Great Britain, to His Majesty's Privy Council.

#### ARTICLE 3

Care shall be taken, on both sides, scrupulously to examine whether the regulations and precautions agreed upon in the present convention have been observed, which shall be done with all possible dispatch. The two high contracting Parties moreover mutually engage to adopt the most efficacious measures, in order to prevent the sentences of their several tribunals, respecting captures made at sea, being subject to any unnecessary delay.

#### ARTICLE 4

The goods in litigation can not be sold or unloaded before final judgment without an urgent and real necessity, which shall have been proved before the court of admiralty, and by virtue of a commission to this effect; and the captors shall by no means be permitted to remove or take away, on their own authority, either openly or clandestinely, any thing from a vessel so detained.

These additional articles, making part of the convention signed the 5/17 June, 1801, in the names of Their Imperial and Britannic Majesties, shall have the same force and validity as if they were inserted word for word in the said convention.

In witness whereof, we the undersigned, furnished with the full powers of Their said Majesties, have signed in their names the present additional articles, and have affixed the seal of our arms thereto.

Done at Moscow the 8/20 October, 1801.

[L. S.] PRINCE DE KOURAKIN

[L. S.] COUNT DE KOTSCHOUBEY

[L. S.] ST. HELENS

## DECLARATION

In order to prevent the arising of any subject of doubt or misunderstanding over the contents of the second section of Article 3 of the convention concluded June 5/17, 1801, between His Majesty the Emperor of all the Russias and His Britannic Majesty, the said high contracting Parties have agreed and do declare that the liberty of commerce and navigation accorded by the said article to the subjects of the neutral Power shall never warrant direct transportation, in time of war, of merchandises and provisions of the colonies of the belligerent Power in the continental possessions nor, *vice versa*, of the mother country in the enemy colonies, but that the said subjects shall nevertheless enjoy for this commerce the same advantages and facilities enjoyed by the most favored nations, especially the United States of America.

In faith of which, etc.

Moscow, *October 8/20, 1801.*

[L. S.] PRINCE DE KOURAKIN

[L. S.] COUNT DE KOTSCHOUBEY

[L. S.] ST. HELENS

**Act of Accession of the King of Denmark and Norway to the Convention of June 17, 1801, between Great Britain and Russia relative to Neutral Trade, October 23, 1801<sup>1</sup>**

In the Name of the Most Holy and Undivided Trinity.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, having, in pursuance of their mutual desire to terminate, in the most equitable manner, the differences which had arisen between them, as well as between Great Britain and the other maritime Powers of the north, respecting the navigation of their respective subjects, concluded a con-

<sup>1</sup>Translation. *British and Foreign State Papers*, vol. 1, pt. 1, p. 402. For a French text (*mutatis mutandis*), see Appendix, p. 697. The act of accession of Sweden, signed March 18/30, 1802, is identical with that of Denmark and Norway and is therefore not printed. F. Martens, *Traité et Conventions conclus par la Russie*, vol. 11, p. 27; Martens, *Recueil*, 2d ed., vol. 7, p. 277.

vention, signed by their plenipotentiaries at St. Petersburg, the 5/17 June, of the present year; and their common solicitude extending itself not only to prevent similar altercations in future, and the troubles which might result therefrom, by establishing and applying the principles and rights of neutrality in their respective monarchies, but also to render this system common and equally advantageous to the maritime Powers of the north; it was stipulated by Article 9 of the said convention, that His Danish Majesty should be invited by His Majesty the Emperor of all the Russias, in the name of the high contracting Parties, to accede to the said convention; and His Majesty the King of Denmark and Norway, animated with the same sentiments of conciliation and peace, and desirous of removing everything which has interrupted, or might hereafter interrupt, the good understanding between Their Britannic and Danish Majesties, and to reestablish fully, on its former footing, the ancient harmony and state of things, such as they existed by His Danish Majesty's treaties and conventions with Great Britain, His said Majesty has not hesitated to listen to the invitation made to him to accede to the said convention signed at St. Petersburg, the 5/17 June last.

To effect this salutary purpose, and to give to this act of accession, and to the acceptance of His Britannic Majesty, every possible authenticity, and every accustomed solemnity, Their said Majesties have named for their plenipotentiaries, viz.: His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, a Peer of the said United Kingdom, one of His said Majesty's Most Honorable Privy Council, and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; and His Majesty the King of Denmark and Norway, the Sieur Francis Xavier Joseph Count de Danneskiold Löwendal, Count of the Holy Roman Empire, Knight of the Order of St. John of Jerusalem, Major General in the service of His Danish Majesty, Commander of his Marine Forces, and his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias;

Who, after having reciprocally exchanged their full powers, found to be in good and due form, have concluded and agreed, that all the articles of the convention concluded between His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, the 5/17th June of the present



year, as well as the separate articles annexed thereto,<sup>1</sup> and the additional ones concluded the 8/20th October, 1801, by the plenipotentiaries of Their said Majesties, in all the clauses, conditions, and obligations, are to be considered as having been agreed upon, done and concluded, word for word, by Their Britannic and Danish Majesties themselves, in quality of principal contracting Parties, save and except the differences which result from the nature of the treaties and engagements antecedently subsisting between England and Denmark, of which the continuance and renewal are secured by the aforesaid convention; and with the express stipulation on the part of the high contracting and acceding Parties, that the stipulation of the 2d article of the additional articles, signed at Moscow, the 8/20th October, 1801, by the plenipotentiaries of Their Britannic and Imperial Majesties, which fixes that the adjudication of causes in litigation shall, in the last resort, be carried by appeal, in Russia, before the Directing Senate, and in Great Britain before His Majesty's Privy Council, is to be understood, as, with regard to Denmark, that the said adjudications shall be there carried by appeal before the supreme tribunal of that kingdom.

In order to prevent any inaccuracy, it has been agreed that the said convention, signed the 5/17th June, the separate article annexed thereto, and the additional ones concluded the 8/20th, October, 1801, should be inserted here, word for word, as follows:

[Here follow the convention and additional articles.<sup>2</sup>]

In consequence of all which His Majesty the King of Denmark accedes, by virtue of the present act, to the said convention, and to the said separate and additional articles, such as they are hereinbefore transcribed, without any exception or reserve, declaring and promising to fulfil all the clauses, conditions, and obligations thereof, as far as regards himself; and His Majesty the King of the United Kingdom of Great Britain and Ireland accepts the present accession of His Danish Majesty, and in like manner promises, on his part, to fulfil all the articles, clauses, and conditions, contained in the said convention, and the separate and additional articles hereinbefore inserted, without any exception or reserve.

The ratifications of the present act of accession and acceptance shall

<sup>1</sup>Relating to sequestrations, armistice, etc.

<sup>2</sup>*Antc*, pp. 595, 604.

be exchanged in the space of two months, or sooner if possible; and the stipulations of the said convention shall, at the same time, be carried into execution as speedily as possible, regard being had to the full and entire reestablishment of the state of things, such as it was before the period of the misunderstandings, which are now so happily terminated.

In witness whereof, we the undersigned, by virtue of our full powers, have signed the present act, and have hereunto affixed the seal of our arms.

Done at Moscow, the 11/23 October, 1801.

[L. S.] ST. HELENS

[L. S.] F. X. J. COMTE DE DANNESKIOLD LÖWENDAL

**Ordinance of the King of Denmark regulating the Conduct and defining the Obligations of the Merchants and Mariners of His States in Time of War between Other Maritime Powers, May 4, 1803<sup>1</sup>**

We, Christian VII, by the grace of God King of Denmark and Norway, etc., to all whom it may concern.

Although the rules, by which merchants and seamen who are our subjects must be governed in time of war between other maritime Powers, have been laid down in a number of our previous ordinances, we nevertheless deem it necessary, in present circumstances, to set forth in a single ordinance the contents of these regulations, modified in several respects and in the form in which they must henceforth serve as the rule, in order that the greatest possible publicity may be given by these presents to the invariable principles, according to which we intend to maintain at all times the rights of the merchants and seamen of our States, and that no one may allege ignorance of the duties which he must fulfil, as a Danish subject, in a similar case. Therefore, it is our royal will that the following regulations be scrupulously observed, as the only rule of conduct, by all those who may wish to participate in the advantages which the neutrality of our flag in time

<sup>1</sup>Translation. French text, Martens, *Recueil*, 2d ed., vol. 8, p. 93.

of war assures to the legitimate commerce and navigation of our subjects. For these reasons, revoking by these presents our former ordinances with regard to the conduct of our subjects during a foreign naval war, we order and publish the following:

#### ARTICLE 1

Any merchant or navigator of our States who may wish to send a vessel belonging to him to any foreign port or place, to which the effects of a war that has broken out between other maritime Powers may extend, shall be required to secure a royal passport in Latin and such other papers and documents as are necessary for the legitimate sailing of a ship. To this end, our subjects are notified at the beginning of such a war, for what foreign ports or places it has been deemed necessary that they be provided with our royal passport in Latin.

#### ARTICLE 2

Such passport may not be delivered to the owner of the vessel until he shall have obtained a certificate vouching for his ownership.

#### ARTICLE 3

To obtain the certificate required by the foregoing article, he must be our subject, born in our States, or he must have acquired, before the outbreak of hostilities between any maritime Powers of Europe, complete enjoyment of all the rights of a domiciled subject, either of our countries or of some other neutral State. The owner of the vessel, for which the certificate is requested, must, in any event, reside in some part of our kingdoms or of the countries belonging to us.

#### ARTICLE 4

To procure the above-mentioned certificate, it is necessary to appear before the magistrate of the city or maritime locality from which the ship sails, or else the place of residence of the majority of the owners: all of the latter shall be required personally to certify, either by oral oath, or by formal oath in writing signed by their own hands, or else the principal owner, in the name of all, that the vessel really belongs to them, all being our subjects, and that it has not on board

any contraband of war for the account of the belligerent Powers or any of their subjects.

#### ARTICLE 5

During the course of a foreign naval war, no one, who was born a subject of any of the Powers engaged therein, may be the captain of a merchant ship sailing under our royal passport, unless he proves that he acquired citizenship in our kingdoms or countries before the outbreak of hostilities.

#### ARTICLE 6

Every merchant captain, who wishes to be admitted to the command of a vessel provided with our royal passport, must have acquired citizenship in some part of our States. His citizenship papers must always be on board his vessel before its departure from the port where the passport is issued; he shall be required to make oath, in the prescribed form, that no act shall, with his knowledge or consent, be committed or attempted, with regard to the said vessel, which might involve abuse of the passports and certificates issued to him. The oath shall be sent to the competent department with the application for the passport. But in case this can not be done because of the absence of the captain, the owner of the vessel shall be required to give notice thereof to the said department, and our consul or commercial agent in the district where the captain happens to be shall see to it, on his responsibility, that he makes the prescribed oath.

#### ARTICLE 7

There must not be on board vessels provided with the above-prescribed passport any supercargo, clerk, or other ship's officer who is the subject of a Power at war.

#### ARTICLE 8

Half of the crews of the vessels above specified, including the boat-swains and boatswains' mates, shall consist of natives of this country. If the crew of a vessel should become depleted in a foreign country through desertion, death, or sickness, and if the captain should find it impossible to comply with the aforesaid rule, he shall be allowed to

engage as many foreign subjects, preferably subjects of neutral countries, as he may need to continue his voyage; provided, nevertheless, that the subjects of a Power at war, on board his ship, shall in no case constitute more than one third of the entire crew. Whenever a change is made in his crew, the captain must make entry thereof, with a statement of the causes which rendered it necessary, in the vessel's muster roll, which muster roll shall be duly attested by the consul or commercial agent, or his deputy, in the first port touched by the vessel, in order that this attestation may serve as the captain's authority wherever there may be need.

#### ARTICLE 9

The papers and documents specified below must always be on board vessels provided with our royal passport, to wit: the certificate prescribed by Article 2.

Its construction papers, and if the vessel was not built for the present proprietor, the contract of sale or the purchase documents shall be attached thereto. The former of these two instruments and the latter, if there be occasion, shall accompany the application of the owner for a passport.

The royal passport in Latin, with the translations thereto appertaining.

Its measurement certificate.

The muster roll of the crew, duly verified by the competent officers.

The charter-parties and bills of lading covering the cargo, and finally, the attestation of the custom house of the locality where the cargo has been loaded.

#### ARTICLE 10

The measurement certificate shall be issued by the officers appointed for this purpose in the maritime localities of our kingdoms and countries. In case one of our subjects shall have bought a vessel in some foreign port, our consul or commercial agent on the spot, shall be authorized to attend to the measurement and to issue to the captain a provisional measurement certificate, which shall be considered valid until the vessel reaches some port of our States, where it shall be measured and marked in due form, whereupon a measurement certifi-

cate in the regular form shall be issued, which thereafter shall form a part of the sailing papers of the vessel.

#### ARTICLE 11

A ship-owner is forbidden to secure and a captain to have on board false sailing papers; the ship shall not fly a foreign flag while on a voyage under papers and instruments issued by us.

#### ARTICLE 12

Our royal passport is valid for only one voyage; that is to say, from the time that the vessel, after having secured it, sails from the port where it was issued until its return to the same port, it being understood that in the meantime it shall not have changed hands, in which case the new owner shall be required to procure, in his own name, the necessary papers and documents.

#### ARTICLE 13

Since according to the generally established principles the subjects of a neutral Power can not be permitted to transport in their vessels goods that would be considered contraband of war, if they were destined for the ports of a belligerent Power or if they belonged to its subjects, we have deemed it advisable to define expressly what shall be included under the head of contraband of war, in order to prevent the abuse of our flag in covering the transportation of prohibited articles and so that no one may allege ignorance on this score. Therefore, we declare that the articles and merchandise hereinafter specified shall be considered contraband of war: cannons, mortars, arms of all kinds, pistols, bombs, grenades, bullets, balls, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles, with the exception, however, of such quantity as may be necessary for the defense of the vessel and of those composing its crew.

Moreover, the positive agreements contracted with foreign Powers respecting merchandise and property, the transportation of which in time of war is prohibited by the said agreements, shall remain in force, and to this end special regulations shall be drawn up, to be delivered to every ship-owner when he receives our royal passport.

## ARTICLE 14

In case a vessel bound for a neutral port should ship as cargo goods that would be contraband of war, if they were destined for a port belonging to some belligerent Power, it shall not be sufficient for the owner and the captain to make oath as prescribed above, but the owner and the captain shall be further required to make conjointly a declaration different from the general customs declaration, in which shall be specified the kind, the quantity, and the price of these goods. This declaration shall be verified by the customs officers at the place from which the vessel sails; after which the customs officer having jurisdiction shall forward it immediately to the general custom house, to be used in checking and verifying the arrival of the goods therein specified at their place of destination therein set forth, unless their arrival should be prevented by capture or forcible detention, whereof satisfactory proof must be furnished. This checking up shall be effected in the following manner:

The shipper of such goods must furnish a certificate in writing from our consul or commercial agent, or of their deputy, at the place for which the vessel is bound, or in their default, from the competent magistrate or some other person publicly authorized and qualified for this purpose; which certificate shall state the arrival of the vessel and the discharge of its cargo in conformity with the aforesaid declaration, and shall be the legal evidence thereof. This certificate shall be sent to our General Bureau of Economics and Commerce as soon as the vessel shall have reached the port for which it was bound, or else after its return to one of the ports of our kingdoms. In case this certificate is not transmitted within a period proportionate to the length of the voyage, our General Bureau of Economics and Commerce shall require the owner of the vessel to make a declaration, such as he shall be willing to swear to, to the effect that he has received no news of the vessel or of the goods. If the arrival of the vessel and the discharge of the goods above specified in a neutral port can not be proved, and if a capture at sea or some other unfortunate event is not the cause thereof, the owner shall pay into the treasury of our General Bureau of Economics and Commerce a fine of twenty rigsdalers for every last of goods carried by the vessel; and both the owner and the captain shall, in addition, be liable to prosecution under the fiscal laws.

## ARTICLE 15

All captains of vessels are forbidden to sail for a port blockaded by sea by one of the Powers at war; they must conform strictly to the instructions given them by the competent magistrates with regard to the blockade of such a port. In case a captain, desiring to enter a port of the blockade of which he is unaware, encounters a ship of the line flying the flag of one of the Powers at war, whose commander notifies him that this port is actually blockaded, he shall be required to withdraw forthwith and shall not attempt in any way to enter it as long as the blockade is not raised.

## ARTICLE 16

None of our subjects shall be permitted to enter the service of any corsair or privateer of a country at war, nor himself to arm vessels for such a purpose, nor to have a share or interest in such vessels. No ship-owner or captain shall permit the use of his ship for the transportation of troops or munitions of war of any kind whatsoever. In case a captain is unable to prevent, because of the superiority of the force used against him, the use of his vessel for such a purpose, he shall be required to make formal protest in a properly attested instrument against the act of violence which it was not in his power to escape.

## ARTICLE 17

When a vessel that is not under military convoy shall be hailed at sea by an armed ship belonging to one of the belligerent Powers, which is authorized to inspect the sailing papers on board merchant ships, the captain shall offer no resistance to such examination, if the captain of the armed ship states it to be his intention to make it; but he shall be required to show in good faith and without concealment all the papers and documents pertaining to his vessel and to its cargo.

The captain of the vessel, as well as its officers and crew, is likewise forbidden, under severe penalties, to throw overboard, to destroy, or to hold back any of the documents forming part of the papers relating to the vessel and its cargo, either before the visit or while it is in progress. In case we shall have granted armed protection to the commerce under our flag, then merchant captains, who may desire to be received under convoy, shall be required first to show their sailing



papers to the commander of the convoy and to be governed by his orders in every particular.

#### ARTICLE 18

Any owner or captain who shall contravene, wholly or partially, the articles and rules of this ordinance, shall forfeit his citizenship and his right to engage in maritime commerce, and shall, furthermore, be liable to prosecution under the fiscal laws, and shall be punished, according to the seriousness of the offense, either as a perjurer or as a violator of royal ordinances. On the other hand, it is our intention to protect and to maintain the rights of all our dear and faithful subjects who shall strictly conform to the above-mentioned rules in their legitimate commerce and navigation. Therefore, we have ordered all our Ministers, consuls, and other agents in foreign countries, to be most active in their efforts to prevent our said subjects from being vexed or molested, and, if they should be, to help them to obtain justice and redress of their grievances. We promise, furthermore, to support all well-founded claims which they may have occasion humbly to lay before us.

Given at Copenhagen, May 4, 1803.

Under our hand and seal.

CHRISTIAN R.

#### **Declaration of Neutrality of the Republic of the Seven Islands, June, 1803<sup>1</sup>**

The Republic of the Seven Islands, having no concern whatever in the matters in dispute between the two Powers, whose good-will and friendship it appreciates, is pleased to see in its midst the public agents of both and shall not cease to show them proper deference and regard. It deems it to be its duty to declare hereby to all Europe, to all the Powers its friends, and particularly to France and England, that it will observe the strictest neutrality, in conformity with the

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 8, p. 102.

principles of the law of nations, convinced, as it is, that the last two States will observe the same impartiality with respect to it and will not permit the slightest violation of its neutrality, either in the matter of its political and territorial rights, or in the matter of its commercial relations and the property of its subjects. The Government of these Islands therefore orders its inhabitants to have every regard and sentiments of affection and mutual consideration for all the war and merchant ships and all individuals of the two belligerent nations. It enjoins especially, holding them to the strictest accountability, all the civil and military employees of this Republic not to permit in any way that any injury, on any pretext whatever, be done to any individual who is a subject of either of the two belligerent Powers; for the Government of the Seven Islands desires to remain constantly on the best of terms with them, and to maintain with them relations of friendship and commerce.

**Decree of the Prince Regent of Portugal concerning the Observance of Neutrality in His States, June 3, 1803<sup>1</sup>**

As it is always the object of my paternal wishes and of my royal sentiments to maintain intact the peaceful relations which happily exist between me and the Powers, my allies and friends; as to this end, in the present circumstances of Europe, it is advisable to define the principles which must serve as the basis of a system of absolute neutrality, which it is my intention shall be religiously observed, if war should break out—which Heaven forbid!—among the Powers, my allies and friends; and considering how greatly it is to the interest of the welfare of mankind and to the tranquillity of my States and vassals to prevent the most trivial differences, which might result from ignorance of the ordinances issued to carry out the purpose which I have in mind:

I therefore declare ‘that the privateers of the belligerent Powers shall not be admitted to the ports of my States and dominions nor shall the prizes which may be taken, either by them or by vessels of the

<sup>1</sup>Translation. French text, *ibid.*, p. 101.

line, frigates or other war-ships, except only in cases where the law of nations declares hospitality to be absolutely necessary, and then only on condition that it be not permitted to sell the said prizes or their cargoes discharged in these ports, when there are prizes in such cases; nor may the vessels remain longer than is necessary to avoid danger or to receive the innocent assistance of which they may have need."

Likewise the decree of August 30, 1780, in which the same thing is ordered, is renewed and is to be in full force.

The war council shall see to the execution of all these ordinances and shall issue the necessary orders to the governors and commanders of provinces, of fortresses, and of maritime localities.

QUELUS PALACE, *June 3, 1803.*

**Proclamation of the Prince and President of the Senate of the Republic of the Seven Islands, containing Regulations governing the Conduct of His Subjects with regard to the Maintenance of Neutrality, July 9, 1803<sup>1</sup>**

On the first news of the renewal of the war between the two high Powers, England and France, the Government of the Seven United Islands hastened to manifest its sentiments of loyal friendship, devotion, and impartiality toward these Powers, by proclaiming to all Europe its absolute neutrality in the differences between the said belligerent Powers.

The Senate, now wishing to confirm still further the sincerity of the intentions of the Republic and the care it has taken to see that its subjects religiously observe this neutrality, has adopted the following provisions and orders the most exact and absolute execution thereof:

ARTICLE 1

It is expressly forbidden all subjects of the Republic to take the slightest part, direct or indirect, in the present war, either as sailors

<sup>1</sup>Translations. French text in Martens, *Recueil*, 2d ed., vol. 8, p. 103.

or soldiers, or in any other capacity, on the war-ships or privateers of either of the belligerent Powers, which may touch at the ports of the State or at any other place or foreign port.

#### ARTICLE 2

It is likewise forbidden captains and officers of our vessels to enter, on any pretext whatever, the service of either of the belligerent Powers, whether for transportation or for any other purpose; as well as to load their vessels with munitions of war or other contraband goods, to transport them to other vessels or to places or localities belonging to the said Powers, or to cities or ports which are under siege.

#### ARTICLE 3

Any person who shall act contrary to the provisions of the two foregoing articles shall incur capital punishment, and his property, both real and personal, present and future, shall be confiscated, and the proceeds thereof shall be turned into the public treasury.

#### ARTICLE 4

The present proclamation shall be printed in the two languages and published, with all due formalities, in all the cities, burghs, and villages of our Islands. Moreover, a printed copy shall be delivered by the respective governments to all the parish churches, with formal orders that they be read on the most solemn feast days, after divine service, and that they be publicly posted in the parish.

#### ARTICLE 5

In order that the present provisions may be absolutely carried out, several printed copies shall be transmitted to all the Ministers and consuls of the Republic, with orders, under penalty of dismissal, to read them to the captains and crews of our national vessels, which may touch at the ports under their jurisdiction, and to prevent by their vigilance and authority any contravention of the rules laid down in Article 2.

## ARTICLE 6

In case of any contravention, the said Ministers and consuls shall be required to arrest immediately the culprits and their vessels, and to send them under strong guard that they may be placed at the disposition of the Senate.

Given at the Senate House of Corfu, July 9, 1803.

SPIRIDION GEORGE TETOCHI,  
*Prince and President.*

**Convention of July 25, 1803, between Great Britain and Sweden explaining Article 11 of the Treaty of 1661<sup>1</sup>**

His Majesty the King of Sweden and His Majesty the King of the United Kingdom of Great Britain and Ireland, equally animated by a desire to preserve the good understanding which happily exists between them and to prevent the recurrence of differences such as have arisen with regard to the eleventh article of the treaty of commerce, concluded and signed at Whitehall on October 21, 1661,<sup>2</sup> have appointed and authorized to this effect, His Swedish Majesty, George Ulrich, Baron Silverhjelm, his Envoy Extraordinary and Minister Plenipotentiary to His Britannic Majesty, Knight of the Order of the Polar Star; and His Britannic Majesty, the Right Honorable Robert Banks Jenkinson, Lord Hawkesbury, member of the Privy Council, Principal Secretary

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 8, p. 91. See footnote 2, *infra*.

<sup>2</sup>ARTICLE 11: Altho the foregoing articles of this treaty, and the laws of friendship do forbid, that either of the confederates shall give aid and supplies to the enemys of the other, yet it is by no means to be understood that that confederate, with his subjects and inhabitants, who is not a party in war, shall be deny'd the liberty of trade and navigation with the enemys of that confederate who is involv'd in such war; provided only that no goods call'd contraband, and especially money, no provisions, nor arms, nor bombs with their fusees and other appurtenances, no fire-balls, gun-powder, matches, cannon-ball, spears, swords, lances, pikes, halberts, guns, mortars, petards, grenadoes, musket-rests, bandaliers, salt-petre, muskets, musket-bullets, helmets, head-pieces, breast-plates, coats of mail, commonly call'd cuirasses, and the like kind of arms, nor soldiers horses with their furniture, nor pistols, belts, or any other instruments of war, nor ships of war and guard-ships, be carry'd to the enemys of the other confederate, on the penalty of being made prize without hopes

of State for Foreign Affairs, who, after having duly communicated to each other their respective full powers, have agreed upon the following articles :

#### ARTICLE 1

In case either of the two contracting Parties should remain neutral in a war in which the other contracting Party should be a belligerent, the vessels of the neutral Power may not carry to the enemy or enemies of the belligerent Power coined money, arms, bombs with their fuses and appurtenances, shells, gunpowder, fuses, bullets, lances, swords, pikes, halberds, cannons, mortars, petards, musket-rests, bandoleers, saltpeter, muskets and balls, helmets, morions, breastplates or coats of mail, or other kinds of arms, troops, horses, or anything required for the equipment of cavalry, pistols, sword-belts, or other instruments of war, war-ships or guard-ships, or any manufactured article used directly in their equipment, all under penalty of confiscation, when such articles are seized by either of the contracting Parties.

#### ARTICLE 2

The cruisers of the belligerent Power shall have the right to detain the vessels of the neutral Power bound for ports of the enemy with cargoes of provisions or pitch, rosin, tar, hemp, and in general all raw materials used in the equipment of vessels of all sizes, and likewise all manufactured articles used in the equipment of merchant ships (herring, bar iron, steel, red copper, brass, brass wire, planks and thick planks, except those of oak and spars, nevertheless excepted) ; and if the cargoes thus exported in vessels of the neutral Power were produced in the territory of that Power and were shipped for the account of its subjects, the belligerent Power shall, in this case, have the right to purchase them, on condition that it pay ten per cent in addition to the amount of the bill for the cargo faithfully declared, or of the true

of redemption, if they are seiz'd by the other confederate. Nor shall either of the confederates permit that the rebels or enemys of the other be assisted by the endeavors of any of his subjects, or that their ships be sold, lent, or in any manner made use of by the enemys or rebels of either, to his disadvantage or detriment. But it shall be lawful for either of the confederates, and his people or subjects, to trade with the enemys of the other, and to carry them any merchandise whatsoever (excepting what is above excepted) without any impediment ; provided they are not carry'd to those ports or places which are besieg'd by the other, in which case they shall have free leave either to sell their goods to the besiegers, or to repair with them to any other port which is not besieg'd. *Collection of Treatys*, vol. 3, p. 247.

market value of the goods either in Sweden or in England, at the option of the owner, and furthermore compensation for the detention and incidental expenses.

#### ARTICLE 3

If the cargoes specified in the foregoing article (not being enemy property), with the port of a neutral country as their declared destination, are detained on suspicion of being actually destined for an enemy port, and if it is proved, after due investigation, that they were actually destined for a neutral port, they shall be free to continue their voyage, after having obtained compensation for the detention and incidental expenses, unless the Government of the belligerent State, having good reason to believe that they will fall into the hands of the enemy, should desire to purchase them. in which case they shall be bought at the full price that would have been paid for them in the neutral port of destination, with compensation for their detention and incidental expenses.

#### ARTICLE 4

Herring, bar iron, steel, red copper, brass, and brass wire, planks and thick planks, except those of oak and spars, shall not be liable to confiscation, nor to the right of preemption on the part of the belligerent Power; but they may pass freely in vessels of the neutral country, provided of course that they are not enemy property.

#### ARTICLE 5

The present convention shall be ratified by His Swedish Majesty and by His Britannic Majesty, and ratifications shall be exchanged at London within two months, or sooner if possible.

In faith whereof, we, the undersigned, plenipotentiaries of His Swedish Majesty and of His Britannic Majesty, have signed the present convention and have hereto affixed the seals of our arms.

Done at London, July 25, 1803.

GEORGE ULRICH SILVERHJELM  
HAWKESBURY

**Ordinance of Austria on the Observance of Neutrality, August 7, 1803<sup>1</sup>**

We, Francis II, etc., etc. Whereas we are determined to observe the strictest neutrality in the war which has broken out between France and England, and therefore that the relations of peace and friendship hitherto existing between us and each of the belligerent Powers may continue without interruption, it is necessary, in order to avoid any cause for complaint, that on the one hand this neutrality be observed by all our subjects, in particular by those engaged in navigation and maritime commerce, so far as it depends upon them, and that, on the other hand, the rights of our neutral coasts and localities be maintained, and also that commerce with each of the belligerent Powers, provided that it be carried on in accordance with the rules of neutrality, be duly ensured. For these reasons and to this end, as well as to prevent any misunderstanding or difficulty, which might result from ignorance or neglect of the said duties and rights, we publish by these presents the following provisions, which are founded in part on the rules laid down in existing treaties between the European Powers, and in part are in conformity with the practices followed among them by virtue of the law of nations, by which provisions our civil and military officers and all our subjects shall be guided during the present naval war.

**ARTICLE 1**

By these presents we forbid all our subjects and all the inhabitants of our country to enlist for duty on land or sea in the service of either of the belligerent Powers, in any rank whatever, or voluntarily to enter the military service of these Powers, under the penalties provided by the laws of our hereditary countries against illegal emigration.

**ARTICLE 2**

Our subjects shall also abstain, in all other respects, from taking part personally in the war or in the military armaments. In particular, they shall refrain from the arming of privateers for the belligerent Powers, and shall have no interest of any kind in such enterprises, when they are carried on outside of our territory.

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 8, p. 105.



## ARTICLE 3

We likewise forbid all our subjects and all the inhabitants of our countries to construct, equip, or sell, in the ports, roadsteads, or on the coasts subject to our dominion, any war-ships or merchant ships, for use by the belligerent Powers, under penalty of a fine of 3,000 ducats for every violation of this prohibition. Half of this fine shall be paid to the informer and half to the treasury, and, in case the culprit is insolvent, shall be replaced by proportionate corporal punishment or imprisonment.

## ARTICLE 4

Furthermore, Austrian navigators, because of the neutrality adopted, are forbidden to transport either marines or sailors, under the guise of passengers or otherwise, for service under any of the belligerent Powers, in particular also to lend their names to vessels or property of the nations at war, or, finally, to convey any cargoes or merchandise to localities or ports besieged or blockaded by either of the belligerent Powers, in which case they could not enjoy the freedom of neutral flags according to the established practice of nations, nor could they expect from us any protection or intercession.

## ARTICLE 5

Austrian ships may not have on board naval officers of the belligerent Powers, or sailors belonging to those Powers, exceeding a third of the crew, since the vessel would otherwise not be considered neutral.

## ARTICLE 6

In the just expectation that neutral Austrian commerce shall be duly respected by the belligerent Powers and that the rights which custom confers upon them shall be exercised by them with the ordinary modifications, required by the law of nations or by treaties, we order that Austrian navigators shall not resist visit on the high seas on the part of foreign war-ships, but that they shall show without throwing any difficulties in the way the papers and documents proving the neutrality of the vessel and its cargo, and shall not throw any of these instruments overboard or destroy them in any way; still less shall they be permitted to have false, misleading, or secret papers on board.

## ARTICLE 7

With regard to neutral commerce and articles which are to be considered contraband during war, we, for our part, assume the same obligations as those contracted by the other neutral Powers, to wit, Russia, Sweden, and Denmark, in their last convention with England, of June 17, 1801.<sup>1</sup> In return, we shall expect the belligerent Powers to observe toward us and the commerce of our subjects the same consideration and to respect the same rights, which these Powers and the other neutral States must enjoy for the same reason. Consequently, we forbid all our subjects, who are navigators and merchants, to transport, for the Powers now at war, any of the goods or munitions of war hereinafter designated, to wit: cannons, mortars, arquebuses, pistols, bombs, grenades, bullets, guns, gun-flints, fuses, powder, saltpeter, sulphur, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles. All these articles being generally regarded as contraband, only such quantities of them may be carried on neutral vessels as are necessary for their use and defense. Any of our subjects who, in spite of our prohibition, shall engage in this forbidden commerce, shall incur the penalty of their disobedience, and shall, moreover, be exposed to all the injuries that they may suffer through the capture and confiscation of their vessels by the belligerent Powers.

## ARTICLE 8

With the exception of the articles designated in the preceding article, trade in merchandise, products, and wares shall be carried on without restriction with the belligerent Powers, provided the exportation of such goods from the hereditary countries is not prohibited, in general, by existing laws and regulations, or by laws or regulations that may hereafter be published. Nevertheless, all purchasing, storing, and transporting of articles of equipment and provisions for the fleets and armies at war, is forbidden. The vessels which shall enter the ports may only load such quantity as is necessary for their own use. For the rest, our subjects engaged in sea-going trade shall act with prudence, paying attention to everything that may be published on this subject by the belligerent Powers, and considering the annoyances that might result with regard to their commerce.

<sup>1.</sup>*Ibid.*, pp. 595, 606.

## ARTICLE 9

As it is self-evident that, in order to avoid all difficulties on the high seas, neutral navigators must prove the neutrality of their vessel and its cargo, any of our subjects who may wish to put to sea from one of our ports and transport his cargo to distant ports, coasts, or countries, whether neutral or at war, must obtain from the nearest authority, or from the magistrate of the place, the necessary maritime passports, as well as customs certificates, charts, bills of lading, and the other customary documents, on which shall appear the name of the owner, the character and quantity of the cargo, the place of destination, and the consignee. We shall immediately publish special regulations on the form, the manner in which these passports shall be drawn up, and the precautionary measures necessary to prevent abuse thereof.

## ARTICLE 10

Since Austrian vessels may, in spite of the present war, continue unrestrained their commerce and their business in the ports of the belligerent Powers, the war and merchant ships of these Powers may likewise freely enter, as before, all Austrian ports, remain there as long as they see fit, make repairs, etc., if they conform strictly to the rules and principles of neutrality. However, in order to observe on this point perfect equality with regard to war-ships and, so far as possible, to avoid all difficulties, we decree that, so long as the present war lasts, no more than six war-ships of each of the belligerent Powers may enter our ports at one time.

## ARTICLE 11

Since all vessels without exception must enjoy the protection which neutrality ensures, and absolute security in all the ports, roadsteads, and coasts subject to our dominion, it shall not be permissible for one or more vessels of the Powers at war to engage in hostilities in the said ports, nor within cannon-shot of the coasts, and consequently there shall be no fighting, pursuit, attack, visit, or seizure of ships in the said waters. Our authorities and particularly the military commanders in our seaports shall especially watch over these matters.

## ARTICLE 12

By virtue of the rights proceeding from the said neutrality, it shall not be permissible for the vessels of the belligerent Powers to cruise off our ports within the distance mentioned in the foregoing article, lying in wait for ships entering or leaving; still less may they remain in the said ports for the purpose of sailing out to meet incoming vessels or of pursuing those that wish to put to sea.

## ARTICLE 13

When privateers or armed merchant ships of the two belligerent Powers chance to be at the same time in one of our ports and one of them wishes to put to sea, the other may not leave within twenty-four hours, it being understood that the vessel which anchored in the port first has the right to put to sea before or after the other. War-ships or entire squadrons shall not, however, be subject to this twenty-four hour rule, provided their commanders give their word of honor to the governor or chief officer of the port that they will not pursue or molest during this period of time any vessel of the enemy. The word of honor shall be given once for all by commanders of fleets and squadrons; the captains of single vessels must renew their promise every time they wish to put to sea. As for captains of armed merchant ships or privateers, they may not leave the port within twenty-four hours, unless they give sufficient security for the fulfilment of their promise.

## ARTICLE 14

Vessels of the belligerent Powers shall not be permitted to leave the port, when the arrival of a foreign vessel has been reported, unless, as provided in the preceding article, the commander of war-ships has given his word, or the merchants or privateers have furnished sufficient security, to abstain from any act of hostility against the said vessels.

## ARTICLE 15

Small vessels, like tartans, trabacolos, feluccas, rowboats, etc., are excepted from this provision. Their crews and armaments being too insignificant to be able to commit any act of hostility, they may consequently leave the port whenever they see fit.

## ARTICLE 16

The enlistment of sailors for service under the belligerent Powers is forbidden in our ports; and in case vessels belonging to these Powers shall have need of men to complete their crews, they shall be permitted to procure them, on condition, however, that they shall not engage any of our subjects or inhabitants of the country and that they shall not take by force the crew of any other vessel of the same belligerent Power, but that their crew shall be completed with individuals who shall enlist voluntarily.

## ARTICLE 17

Prizes which the vessels of one of the belligerent Powers shall have taken from the other may be brought into all our ports, where there is a commander or governor, and specifically into the ports of Venice, Trieste, Fiume, Zeng, and Zara. Effects may be unloaded, stored, and guarded, provided they are not articles whose importation into our countries is prohibited. They may be bought, sold, and again exported for sale elsewhere, on condition nevertheless that the competent courts of the Power making the prize shall have passed upon its legality. If, during this interval, certain effects might run the risk of being spoilt, they may be sold, on condition nevertheless that sufficient security be given to cover their value, in case the courts decide that the prize must be released.

## ARTICLE 18

In case claims are made, which give grounds for the presumption that the prize was taken illegally and in contravention of the provisions of Articles 10, 11, 12, and 13 of this ordinance, our governors and presidents of regency, after having taken the necessary testimony, shall pass upon the case summarily and without appeal; and if it should actually happen that a vessel brought into one of our ports had been taken in violation of the laws of neutrality, such a prize shall be declared illegal by our officers and shall be restored to its owner.

## ARTICLE 19

The belligerent Powers shall not be permitted to put ashore in our ports, roadsteads, or on our coasts any individual as a prisoner of war, for immediately on setting foot on the territory of a neutral sovereign,

or one that is friendly to their Government, such prisoners must be regarded as free, and all the military and civil authorities must give them, as such, protection and assistance.

#### ARTICLE 20

In consequence of all these obligations which we have contracted and the measures taken for the protection of the vessels of belligerent Powers in our ports, we do not doubt that these Powers will respect with regard to us the rights that belong to a neutral State and which all the other nations enjoy. We expect them above all to give to the commanders of their fleets and to the captains of armed vessels and privateers orders not to molest on the high seas Austrian ships laden with non-prohibited goods, but to allow them to continue their course freely, if their papers and passports are in order, even though they may be bound for an enemy port. And, finally, that they shall render prompt and impartial justice to our navigators, who may have grievances against the commanders of their war-ships or privateers.

#### ARTICLE 21

The present regulations shall be published in the German and Italian languages in all our hereditary countries, and particularly in all our ports and countries near the coast, so that all our subjects who are navigators and merchants may conform hereto. Our civil and military authorities must also be guided by the provisions hereof in cases which may arise, and must see that they are scrupulously executed.

Given *August 7, 1803*.

#### **New Regulations of Sweden regarding Commerce and Navigation with Foreign Maritime Powers in Time of War, January 21, 1804<sup>1</sup>**

We Gustavus Adolphus, by the grace of God King of Sweden, of the Goths and of the Vandals, etc., heir to Denmark and Norway, Duke of Schleswig-Holstein, etc., proclaim that, desiring to ensure to

<sup>1</sup>Translation. French text in Martens, *Recueil*, 2d ed., vol. 8, p. 112.

Swedish navigation, during the disturbances of the present war, all the security which the maintenance of the commercial relations of Sweden with other nations demands, and having recognized the necessity of the strictest observance, on the part of our faithful subjects who are merchants, of the obligations and precautions, which, by virtue of the formal treaties and conventions existing between us and other Powers, are required to ensure to the Swedish flag all the rights and prerogatives which it should enjoy as a neutral; and to avoid, on the other hand, everything that may in any way render it suspect to the Powers at war, and therefore expose it to insults, we have seen fit to have our regulations of December 23, 1800,<sup>1</sup> revised, and to determine and prescribe with greater precision what rules must, in time of war between maritime Powers, necessarily be observed by Swedish navigators, if they desire to be respected in their voyages and to be considered, together with their ships and effects, as belonging to a neutral Power. With this view, we desire, by the present new ordinance on the same subject, to lay down and prescribe the following general rules:

#### SECTION 1

No vessel shall be recognized as Swedish, unless it has been built in Sweden or in some country under its rule, except in the case of a foreign vessel which, having been wrecked on the coast of Sweden, has been bought, repaired, and equipped by Swedish subjects, or unless it shall have been formally naturalized, as purchased by a Swede in a foreign country. However, as to vessels which our subjects may have bought in the countries of the belligerent Powers and from their subjects, such vessels shall not be granted naturalization while the war lasts; but all such vessels as shall have obtained naturalization before the rupture shall be considered Swedish and neutral, from whatever place they may have come or to whomsoever they may have previously belonged.

#### SECTION 2

The documents which a merchant captain must have on board during a voyage, in order to prove that his vessel is Swedish, are, when he is to sail beyond the Baltic Sea and pass through the Sound, a construction certificate, a measurement certificate, a so-called *Turkish* passport issued by the Board of Commerce and a Latin translation

<sup>1</sup>*Ante*, p. 549.

thereof; an exemption certificate; a cargo certificate issued by the magistrate of the place; a passport for the crew; a copy of the oath of the owners; the charter-party signed by the owner, the captain, and the shipper; a declaration of the cargo and of the freight likewise signed by the aforesaid persons; and, finally, a health certificate, when circumstances require it. When the vessel is not to sail beyond the Baltic, it shall not require this so-called *Turkish* passport with its Latin translation; but all the documents above specified must necessarily be carried on board when the vessel sails for a foreign land.

### SECTION 3

The captain shall procure all the said documents in a Swedish port or a port belonging to Sweden; and they may not be issued to a vessel which is not in such a port, unless the vessel has, by chance or through an act of violence, lost its papers, in which case duplicates may be issued, provided the captain immediately on his arrival in port make a formal statement of such mishap, to which he shall make oath, if required.

### SECTION 4

Captains are strictly forbidden to have misleading or false papers and bills of lading, or to fly a foreign flag on any occasion and on any pretext whatever.

### SECTION 5

The captain and half the crew must be Swedish subjects, in order that the vessel and goods may be regarded as Swedish or neutral. But if it should happen during the stay of the vessel in a foreign country that the crew, through desertion, death, or sickness, should become so diminished that those left, that is to say, those remaining in good health, were not sufficient to man the ship, the captain shall be allowed to engage, with the knowledge of the Swedish commercial agent, as many foreign sailors, preferably subjects of neutral States, in excess of the prescribed number as he may need to continue his voyage. However, the number of subjects of the belligerent Powers on board the vessel shall never exceed one-third of the crew, the captain being required to enter every change of this kind and the causes thereof, on the muster-roll of the crew, and the genuineness of this entry must be attested by the Swedish commercial agent, or in case there is no



such agent, by the magistrate, the notary public, or other person of like authority according to the practice of the country.

## SECTION 6

Swedish vessels, as neutrals, may freely sail to the ports and along the coasts of the nations at war; and all goods on board neutral vessels shall be free, with the exception of contraband of war and enemy property. Therefore, all our subjects in general are forbidden, under the strictest accountability and inevitable penalties for violators, to engage in contraband trade with the subjects of any of the belligerent Powers; and it is likewise forbidden, under similar accountability and penalties, the commanders of our war-ships and the captains of Swedish merchant ships bound for a port belonging to or subject to either of the nations at war, to load, to have, or to conceal on board any contraband of war; and in order to avoid any ambiguity or misunderstanding as to what is properly to be considered contraband of this nature, we declare that nothing but the following goods shall be included under this head: cannons, mortars, firearms, pistols, bombs, grenades, bullets of all kinds, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles, except such quantities of all these articles as may be necessary for the defense of the vessel and of its crew. All other articles whatsoever, not here specified, shall not be considered munitions of war or naval munitions, nor shall they be subject to confiscation; and consequently, in so far as they can not be considered enemy property, they shall pass freely, and the vessel shall not be exposed to the slightest annoyance. Furthermore, articles of commerce, whether finished products or not, emanating from countries belonging to the belligerent Powers shall not be considered enemy property when they have been purchased by Swedish subjects and are carried for their account, which goods are not to be excepted from the exemption recognized to the Swedish flag as a neutral; but in the particular case of England in this war, our subjects who are engaged in navigation are required to conform to the provisions of the convention which was drawn up between us and the King of Great Britain and Ireland, under date of July 25, 1803,<sup>1</sup> and ratified on August 25 and September 23 of the same year, for the purpose of elucidating Article 11 of the treaty of commerce concluded in 1661 between Sweden and England.

<sup>1</sup>*Ante*, p. 620.

## SECTION 7

It is forbidden any Swedish subject to arm vessels to be used for privateering against either of the belligerent Powers, their subjects, or their property. It is likewise forbidden any Swedish subject to enter the service of foreign privateers.

## SECTION 8

It is furthermore forbidden any Swedish captain to allow himself, or the vessel he commands, to be employed to transport, for either of the belligerent Parties, troops or munitions of war as above specified, unless he is constrained to do so by force and formally protests against it.

## SECTION 9

When a captain, who sails unescorted, is encountered on the high seas by any war-ship or privateer of either of the nations at war who may wish to visit his vessel, he must not refuse, nor must he attempt to escape such visit; but he is required to produce his papers frankly and without dissimulation, it being in such a case strictly forbidden the captain and the crew to abstract any documents relating to the vessel and its cargo, still more to throw any of their papers overboard when the vessel is being hailed or visited.

## SECTION 10

The right to visit Swedish merchant ships under convoy may be exercised only by the war-ships of the belligerent Powers, and does not extend to privateers, which do not belong to the fleets of the said Powers but have been armed by their subjects; merchant captains being required above all to be very careful to follow the orders and signals of the commander of the convoy, and to deviate therefrom as little as possible. It is, moreover, necessary that the owners of merchant ships intending to sail under convoy show their passports, certificates or sailing papers to the commander of the escorting ship, in order to receive the instructions that are to be given them as to their course.

## SECTION 11

No merchant ship shall attempt to enter a blockaded port, after it has been formally notified of the state of such port by the officer commanding the blockading fleet; and to determine what constitutes a blockaded port, none shall be considered such except a port which

has been so closed by a certain number of enemy war-ships stationed sufficiently near to render access thereto clearly dangerous.

#### SECTION 12

A captain who scrupulously observes all the rules above prescribed, shall, according to treaties and the law of nations, enjoy free and unrestricted navigation; and if, notwithstanding, he is molested or suffers injury, he has a right to expect the most energetic support on the part of our Ministers and commercial agents residing in foreign countries in all just claims which he shall make to secure reparation and indemnification. On the other hand, a captain who neglects and fails to observe the orders given him as to his course has only himself to blame for the mishaps which may result from such neglect, and must not look for our high support and gracious protection.

#### SECTION 13

In case a Swedish vessel should be seized, its captain must deliver to the commercial agent or vice agent of Sweden, if there is one in the port where the vessel is brought, but in case there is not, to the nearest Swedish agent or vice agent, a faithful report, duly certified, of the circumstances of the seizure in full detail.

#### SECTION 14

In conformity with our previous orders, no foreign privateer shall be permitted to enter a Swedish port, or to send its prizes thereto, except in case of evident distress. Our subjects are likewise forbidden to purchase foreign privateers, which may have been admitted to a Swedish port for the above-mentioned reason, prizes or captured goods of any kind whatever.

The present regulations shall be published wherever it is deemed necessary, in order that no one may allege ignorance thereof. We command and order all those whom it may concern to conform strictly hereto. In faith whereof we have signed these presents with our own hand and have hereto affixed our royal seal.

Given at Munich, January 21, 1804.

[L. S.] GUSTAVUS ADOLPHUS

GUST. LAGERNIELKE

**Declaration of the Emperor of Russia relative to the Rupture between Russia and Great Britain, in which He proclaims anew the Principles of the Armed Neutrality, November 7, 1807<sup>1</sup>**

The more the Emperor values the friendship of His Britannic Majesty, the more does he regret to see that monarch depart therefrom.

Twice has the Emperor taken up arms in a cause in which the interests of England were most directly at stake. In vain did he solicit that country's cooperation in favor of its own interests. He did not ask England to unite its forces with his own; he merely wished it to divert the enemy's attention. He was surprised to see England take no action in its own behalf; but, a frigid spectator of the sanguinary war which had broken out in its favor, it sent troops to attack Buenos Aires. A portion of its armies, whose object appeared to be to divert the enemy's attention in Italy, finally withdrew from Sicily where it had assembled. There was reason to believe that this withdrawal was for the purpose of making for the coast of Naples; it was learned, however, that England was engaged in an attempt to take possession of Egypt.

But what sensibly touched the heart of His Imperial Majesty was to see England, in violation of the faith and the express and precise pledge of treaties, molest the commerce of his subjects, and at the very time when the blood of Russians was being shed in glorious battles, which kept all the military forces of His Majesty the Emperor of the French, with whom England was and still is at war, busily engaged with the armies of His Imperial Majesty!

When the two Emperors made peace, His Majesty, in spite of his just grievances against England, did not cease his efforts to serve that country. He stipulated in the treaty itself that he would act as mediator between England and France. Then he proffered his mediation to the King of Great Britain, informing him that it was for the purpose of obtaining honorable terms for him. But the British Ministry, apparently bent on loosening and breaking the ties between Russia and England, rejected this mediation.

The peace between Russia and France was to pave the way for a general peace; then England suddenly aroused itself from the apparent lethargy, in which it had lain, but only to hurl fresh firebrands into

<sup>1</sup>Translation. French text, F. Martens, *Traité et Conventions conclus par la Russie*, vol. 11, pp. 106, 142.

northern Europe, rekindling and feeding the fires of war, which it did not wish to see extinguished.

Its fleets and its troops appeared on the coasts of Denmark, committing an act of violence, the like of which history, so fertile in examples, cannot show.

A tranquil and peaceful Power, which by its time-honored and unalterable wisdom had attained a position of moral dignity among the monarchs of the world, found itself seized and treated as if it had been contriving dark plots and meditating the destruction of England, all for the purpose of justifying its total and immediate spoliation.

His dignity wounded, the interests of his people and his engagements contracted with the Courts of the north jeopardized by this act of violence committed in the Baltic—a closed sea—whose tranquillity had long, as was well known to the Cabinet of St. James, been mutually guaranteed by the riparian Powers, the Emperor did not conceal his resentment against England and informed that country that he would not remain insensible to its acts.

His Majesty did not foresee that when England, having won success with its forces, was about to carry off its booty, it would perpetrate a further outrage on Denmark, and that His Majesty was to have a share therein.

New proposals were made, each more insidious than the other, aiming to win to the British side Denmark, downtrodden, degraded, and applauding, as it were, the treatment it had undergone.

Still less did the Emperor foresee that the offer would be made to him to guarantee this subjection and to see to it that this act of violence should have no unfortunate consequences for England. Its Ambassador thought it possible to propose to the Emperor that His Imperial Majesty should become the apologist and supporter of a course of conduct which he had so emphatically censured.

The Emperor gave this proposal of the Cabinet of St. James no more attention than it deserved and considered that the time had come to cease his policy of moderation.

The Prince Royal of Denmark, whose character is one of energy and nobility and who has been endowed by Providence with a dignity of soul equal to the dignity of his rank, apprised the Emperor of the fact that, justly outraged at what had befallen in Copenhagen, he had not ratified the convention and regarded it as null and void.

Now he has brought to the attention of His Imperial Majesty fur-

ther proposals, which have been made to him and which have irritated instead of calming his spirit of resistance, because they would brand his actions with the seal of degradation, which he will never endure.

Touched by the confidence which the Prince Royal has reposed in him, having considered his own grievances against England, and having carefully examined the engagements which he has contracted with the Powers of the north—engagements contracted by the Empress Catherine and by His Majesty the late Emperor, both of glorious memory—the Emperor has decided to fulfil his obligations.

His Imperial Majesty breaks off all relations with England, he recalls his entire Mission to that country, and he does not wish the Mission of His Britannic Majesty at his Court to remain. Henceforth there shall be no intercourse between the two countries.

The Emperor declares that he annuls forever all acts heretofore concluded between Great Britain and Russia, and specifically the convention concluded in 1801, on June 5/17.<sup>1</sup>

He proclaims anew the principles of armed neutrality, that monument of wisdom of the Empress Catherine, and binds himself never to deviate from that system.

He demands that England give complete satisfaction to his subjects for all their just claims for vessels and goods seized or detained contrary to the express terms of the treaties concluded during his own reign.

The Emperor states that there can be no settlement between Russia and England until the latter has given satisfaction to Denmark.

The Emperor hopes that His Britannic Majesty, instead of permitting his Ministers to disseminate new germs of war, as he has done in the past, heeding only his own feelings, will consent to conclude peace with His Majesty the Emperor of the French, thereby extending to the whole world, as it were, the inestimable benefits of peace.

When the Emperor shall be satisfied as to all the preceding points, and specifically as to peace between France and England, without which no section of Europe can look for real tranquillity, His Imperial Majesty will then be willing to resume with Great Britain friendly relations, which in the state of righteous indignation, in which he has every reason to be, the Emperor has perhaps too long maintained.

Done at St. Petersburg in the year 1807, October 26th.<sup>2</sup>

<sup>1</sup>*Ante*, p. 595.

<sup>2</sup>November 7, 1807, new style.

**Extract from the British Reply of December 18, 1807, to the Declaration by which the Emperor of Russia severed Diplomatic Relations with Great Britain and proclaimed anew the Principles of the Armed Neutrality<sup>1</sup>**

His Majesty proclaims anew those principles of maritime law against which the armed neutrality, under the auspices of the Empress Catherine, was originally directed, and against which the present hostilities of Russia are denounced. Those principles have been recognized and acted upon in the best periods of the history of Europe, and acted upon by no Power with more strictness and severity than by Russia herself in the reign of the Empress Catherine.

Those principles it is the right and the duty of His Majesty to maintain; and against every confederacy His Majesty is determined, under the blessing of divine Providence, to maintain them. They have at all times contributed essentially to the support of the maritime power of Great Britain; but they are become incalculably more valuable and important at a period when the maritime power of Great Britain constitutes the sole remaining bulwark against the overwhelming usurpations of France; the only refuge to which other nations may yet resort, in happier times, for assistance and protection.

When the opportunity for peace between Great Britain and Russia shall arrive, His Majesty will embrace it with eagerness. The arrangements of such a negotiation will not be difficult or complicated. His Majesty, as he has nothing to concede, so he has nothing to require: satisfied, if Russia shall manifest a disposition to return to her ancient feelings of friendship towards Great Britain; to a just consideration of her own true interests; and to a sense of her own dignity as an independent nation.

<sup>1</sup>*Annual Register*, 1807 p 774

## APPENDIX





**Declaration of the Empress of Russia regarding the Principles of Armed Neutrality, addressed to the Courts of London, Versailles and Madrid, February 28, 1780<sup>1</sup>**

L'Impératrice de toutes les Russies a si bien manifesté les sentimens de justice, d'équité et de modération qui L'animent, et a donné des preuves si évidentes pendant le cours de la guerre, qu'Elle avoit à soutenir contre la Porte Ottomane, des égards qu'Elle a pour les droits de la neutralité et de la liberté du commerce général, qu'Elle peut s'en rapporter au témoignage de toute l'Europe: Cette conduite ainsi que les principes d'impartialité qu'Elle a déployée pendant la guerre actuelle, ont dû Lui inspirer la juste confiance, que ses sujets jouiroient paisiblement des fruits de leur industrie et des avantages appartenans à toute nation neutre. L'expérience a cependant prouvé le contraire; ni ces considérations-là, ni les égards dûs à ce que prescrit le droit des gens universel, n'ont pû empêcher, que les sujets de S. M. Impériale n'ayent été souvent molestés dans leur navigation et arrêtés dans leurs opérations par celles des Puissances belligérantes. Ces entraves mises à la liberté du commerce général, et de celui de Russie en particulier, sont de nature à exciter l'attention des Souverains et toutes les nations neutres. L'Impératrice voit résulter pour Elle l'obligation de l'en affranchir par tous les moyens compatibles avec sa dignité et avec le bien être de ses sujets; mais avant d'en venir à l'effet et dans l'intention sincère de prévenir de nouvelles atteintes, Elle a cru être de sa justice d'exposer eux yeux de l'Europe les principes qu'Elle va suivre, et qui sont propres à lever tout mal-entendu et ce qui pourroit y donner lieu. Elle le fait avec d'autant plus de confiance, qu'Elle trouve consignés ces principes dans le droit primitif des peuples, que toute nation est fondée à réclamer, et que les Puissances belligérantes ne sauroient les invalider sans violer les loix de la neutralité, et sans désavouer les maximes qu'elles ont adoptées, nommément dans différens traités et engagemens publics. Ils se reduisent aux points qui suivent:

1) Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre.

2) Que les effets appartenans aux sujets des dites Puissances en guerre, soient libres sur les vaisseaux neutres à l'exception des marchandises de contrebande.

3) Que l'impératrice se tient quant à la fixation de celles-ci à ce qui est énoncé dans l'Art. X. et XI. de son traité de commerce avec la Grande-Bretagne, en étendant ces obligations à toutes les Puissances en guerre.

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 158.

4) Que pour déterminer ce qui caractérise un port bloqué on n'accorde cette dénomination qu'à celui, où il y a, par la disposition de la Puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.

5) Que ces principes servent de règle dans les procédures et les jugemens sur la légalité des prises.

Sa Maj. Impériale les manifestant, ne balance point de déclarer, que pour les maintenir et afin de protéger l'honneur de son Pavillon, la sûreté du commerce et de la navigation de ses sujets contre qui que ce soit, Elle fait appareiller une partie considérable de ses forces maritimes. Cette mesure n'influera cependant d'aucune manière sur la stricte et rigoureuse neutralité qu'Elle a saintement observée et qu'Elle observera tant qu'Elle ne sera provoquée et forcée de sortir des bornes de modération et d'impartialité parfaite. Ce n'est que dans cette extrémité, que sa flotte aura ordre, de se porter partout, où l'honneur, l'intérêt et le besoin l'appelleront.

En donnant cette assurance formelle avec franchise propre à son caractère, l'Impératrice ne peut que se promettre, que les Puissances belligérantes pénétrées des sentimens de justice et d'équité, dont Elle est animée, contribueront à l'accomplissement de ses vues salutaires, qui tendent si manifestement à l'utilité de toutes les nations et à l'avantage même de celles en guerre; qu'en conséquence Elles muniront Leurs Amirautés et Officiers commandans, d'instructions analogues et conformes aux principes ci-dessus énoncés, puisés dans le Code primitif des peuples et adoptés si souvent dans leurs conventions.

#### **Declaration of His Danish Majesty to the Courts of London, Versailles and Madrid, July 8, 1780<sup>1</sup>**

Si la neutralité la plus exacte et la plus parfaite, avec la navigation la plus régulière, et le respect le plus inviolable pour les traités avoient pu mettre la liberté du commerce maritime des sujets du Roi de Danemarck et de Norwège à l'abri des malheurs, qui devoient être inconnus à des nations, qui sont en paix et libres et indépendantes, il ne seroit point nécessaire de prendre de nouvelles mesures pour leur assurer cette liberté, à laquelle elles ont le droit le plus incontestable. Le Roi de Danemarck a toujours fondé sa gloire et sa grandeur sur l'estime et la confiance des autres peuples: il s'est fait depuis le commencement de son règne la loi, de témoigner à toutes les Puissances ses amies,

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 178. See also Clausen, p. 142.

les ménagemens les plus capables à les convaincre de ses sentimens pacifiques, et de son désir sincère de contribuer au bonheur général de l'Europe: ses procédés les plus uniformes, et que rien ne peut obscurcir, en font foi. Il ne s'est jusqu'à présent adressé qu'aux Puissances belligérantes elles mêmes, pour obtenir le redressement de ses griefs; et il n'a jamais manqué de moderation dans ses demandes, ni de reconnoissance, lorsqu'elles ont eu le succès, qu'elles devoient avoir. Mais la navigation neutre a été trop souvent molestée, et le commerce de ses sujets le plus innocent trop fréquemment troublé, pour que le Roi ne se crût pas obligé de prendre actuellement des mesures propres à s'assurer à lui même et à ses alliés la sûreté du commerce et de la navigation, et le maintien des droits inséparables de la liberté et de l'indépendance. Si les devoirs de la neutralité sont sacrés, le droit des gens a aussi ses arrêts, avoués par toutes les nations impartiales, établis par la coutume, et fondés sur l'équité et la raison. Une nation indépendante et neutre ne perd point par la guerre d'autrui les droits qu'elle avoit avant cette guerre, puisque la paix existe pour elle avec tous les peuples belligérants, sans recevoir et sans avoir à suivre les loix d'aucun d'eux. Elle est autorisée à faire dans tous les lieux (la contrebande exceptée) le trafic, qu'elle auroit droit de faire, si la paix existoit dans toute l'Europe, comme elle existe pour elle. Le Roi ne pretend rien au delà de ce que la neutralité lui attribue: celle ci est sa règle et celle de son peuple, et Sa Maj. ne pouvant point avouer le principe, qu'une nation belligérante est en droit d'interrompre le commerce de ses Etats, elle a crû devoir à soi même, à ses peuples, fidèles observateurs de ses réglemens, et aux Puissances en guerre elles mêmes, de leur exposer les principes suivans, qu'elle a toujours eus, et qu'elle avouera et soutiendra toujours de concert avec Sa Maj. l'Impératrice de toutes les Russies, dont elle a reconnu les sentimens entièrement conformes aux siens.

I) Que les vaisseaux neutres puissent naviguer librement de port en port, et sur les côtes des nations en guerre.

II) Que les effets appartenans aux sujets des Puissances en guerre soient libres sur les vaisseaux neutres, à l'exception de marchandises de contrebande.

III) Qu'on n'entende sous cette dénomination de contrebande, que ce qui est expressement désigné comme telle dans l'Article III. de son traité de commerce avec la Grande-Bretagne de l'année 1670 et dans les Articles XXVI. et XXVII. de son traité de commerce avec la France de l'année 1742, et le Roi avouera également ce qui se trouve fixé dans ceux-ci, vis-à-vis de toutes les Puissances, avec qui il n'a point de traités.

IV) Qu'on regarde comme un port bloqué celui dans lequel aucun bâtiment ne peut entrer sans un danger évident à cause des vaisseaux de guerre stationnés pour en former de près le blocus effectif.

V) Que ces principes servent de règle dans les procédures, et que justice soit rendue avec promptitude, et après les documens de mer, conformes aux traités et aux usages reçus.

Sa Majesté ne balance point à déclarer, qu'elle maintiendra ces principes ainsi que l'honneur de son pavillon, et la liberté et l'indépendance du commerce et de la navigation de ses sujets, et que c'est pour cet effet, qu'elle a fait armer une partie de sa flotte, quoi qu'elle désire de conserver avec toutes les Puissances en guerre non seulement la bonne intelligence, mais même toute l'intimité, que la neutralité peut admettre. Le Roi ne s'écartera jamais de celle-ci, sans y être forcé: il en connoit les devoirs et les obligations: il les respecte autant que ses traités, et ne désire que les maintenir. Sa Majesté est aussi persuadée, que les Puissances belligérantes rendront justice à ses motifs; qu'elles seront aussi éloignées, qu'elle l'est elle même de tout ce qui opprime la liberté naturelle des hommes, et qu'elles donneront à leurs amirautes et à leurs officiers des ordres conformes aux principes ci-dessus énoncés, qui tendent évidemment au bonheur et à l'intérêt général de l'Europe entière. Copenhague le 8. Juillet 1780.

BERNSTORFF

### Convention for an Armed Neutrality between Russia and Denmark and Norway, July 9, 1780<sup>1</sup>

La présente guerre maritime allumée entre la Grande-Bretagne d'un côté et la France et l'Espagne de l'autre ayant porté un préjudice notable au commerce et à la navigation des nations neutres, S. M. I. de toutes les Russies et S. M. le Roi de Danemarck et de Norwège, toujours attentives à concilier leur dignité et leurs soins pour la sûreté et le bonheur de leurs sujets avec les égards qu'elles ont si souvent manifestés pour les droits des peuples en général, ont reconnu la nécessité, où elles se trouvent, de régler dans les circonstances présentes leur conduite d'après ces sentimens.

S. M. I. d. t. l. R. a avoué à la face de l'Europe au moyen de sa déclaration en date du 28. Février 1780. remises aux puissances actuellement en guerre, les principes puisés dans le droit primitif des nations, qu'Elle réclame et qu'Elle a adopté pour règle de sa conduite pendant la guerre actuelle. Cette attention de l'Impératrice à veiller au maintien des droits communs des peuples, ayant été applaudie par toutes

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 189; Clausen, p. 153.

les nations neutres, les a réunies dans une cause, qui regarde la défense de Leurs intérêts les plus chers et les a porté à s'occuper sérieusement d'un objet précieux pour les temps présents et à venir, en tant qu'il importe de former et de réunir en un Corps de système permanent et immuable, les droits, prérogatives, bornes et obligations de la neutralité. S. M. le Roi de Danemarc et de N. pénétré de ces mêmes principes, les a également établis et réclamés dans la déclaration, qu'il a fait remettre le 8. Juillet 1780. aux trois puissances belligérantes en conformité de celle de la Russie et pour le soutien desquels S. M. Danoise a même fait armer une partie considérable de Sa flotte. De là est résulté l'accord et l'unanimité, avec lesquels A. M. I. d. t. I. R. et S. M. le Roi de D. et de N. en conséquence de Leur amitié et de Leur confiance réciproque ainsi que de la conformité des intérêts de Leur sujets, ont jugé à propos de donner au moyen d'une convention formelle une sanction solennelle aux engagements mutuels à prendre. Pour cet effet Leurs dites Majestés ont choisi et nommé pour Leurs plénipotentiaires, savoir, S. M. I. d. t. I. R. le sieur Charles d'Osten nommé Sacken, Conseiller d'Etat actuel, Chevalier de l'Ordre de St. Anne, Envoyé Extraordinaire et Ministre plénipotentiaire de Sa dite Majesté près de la Cour de Danemarc, et S. M. le Roi de D. et de N. le Sieur Otto Cte. de Thott, Conseiller privé de Son Conseil, Chevalier de l'ordre de l'Eléphant, etc. le Sieur Joachim Otto de Schack Rathlow, Conseiller privé de Son Conseil, Chevalier de l'Ordre de l'Eléphant, etc. le Sieur Jean Henry d'Eickstedt, Conseiller privé de Son Conseil, Gouverneur de S. A. R. le Prince Royal, Chevalier de l'Ordre de l'Eléphant etc., et le Sieur André Pierre Cte. de Bernstorff, Conseiller privé de Son Conseil, Secrétaire d'Etat pour le Département des affaires étrangères, Directeur de la Chancellerie allemande, Chevalier de l'Ordre de l'Eléphant etc. Lesquels après avoir échangé entre eux leurs pleinpouvoirs, trouvés en bonne et due forme, ont arrêté et conclu les articles suivans.

#### ARTICLE I

Leurs dites Majestés étant sincèrement résolues d'entretenir constamment l'amitié et l'harmonie la plus parfaite avec les Puissances actuellement en guerre, et de continuer à observer la neutralité la plus stricte et la plus exacte, déclarent vouloir tenir la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de leurs sujets, avec qui que ce soit des puissances déjà en guerre, ou qui pourroient y entrer dans la suite.

#### ARTICLE II

Pour éviter toute équivoque et tout mal-entendu sur ce qui doit être qualifié de contrebande, S. M. I. d. t. I. R. et S. M. le Roi de D. et de N. déclarent qu'elles ne reconnoissent pour telles que les marchandises, comprises sous cette dénomination dans les traités, qui subsistent entre

Leurs dites Majestés et l'une ou l'autre des puissances belligérantes ; S. M. I. d. t. l. R. se référant nommément à cet égard aux Art. X. et XI. de son traité de commerce avec la Grande-Bretagne, Elle en étend les obligations entièrement fondées dans le droit naturel aux Couronnes de France et d'Espagne, qui n'ont été liées jusqu'ici avec son Empire par aucun engagement formel purement relatif au commerce, S. M. le R. de D. et de N. de son côté se rapporte aussi nommément à l'Art. III. de son traité de commerce avec la Grande-Bretagne et aux Art. XXVI. et XXVII. de son traité de commerce avec la France, et étend les obligations de celui-ci à l'Espagne, n'ayant point avec cette Couronne des engagements qui décident à cet égard.

### ARTICLE III

La Contrebande déterminée et exclue du commerce des nations neutres en conformité des traités et stipulations expresses subsistantes entre les hautes Parties Contractantes et les Puissances en guerre, et nommément en vertu du traité de commerce conclu entre la Russie et la Grande-Bretagne le 20. Juin 1766 ainsi que du traité de commerce conclu entre le Danemarc et la Grande-Bretagne le 11. Juillet 1670 et de celui conclu entre le Danemarc et la France le 23. d'Août 1742. S. M. I. d. t. l. R. et S. M. le R. de D. et de N. entendent et veulent que tout autre trafic soit et reste parfaitement libre. Leurs Majestés après avoir déjà réclamé dans Leurs déclarations faites aux Puissances belligérantes, les principes généraux du droit naturel, dont la liberté du commerce et de la navigation, de même que les droits des peuples neutres sont une conséquence directe, ont résolu de ne les point laisser plus long-temps dépendre d'une interprétation arbitraire suggérée par des intérêts isolés et momentanés. Dans cette vue elles sont convenues :

1) Que tout vaisseau peut naviguer librement de port en port et sur les côtes des nations en guerre.

2) Que les effets appartenans aux sujets des dites Puissances en guerre soient libres sur les vaisseaux neutres à l'exception des marchandises de contrebande.

3) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la disposition de la Puissance, qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.

4) Que les vaisseaux neutres ne peuvent être arrêtés que sur de justes causes et faits évidens ; qu'ils soient jugés sans retard ; que la procédure soit toujours conforme, prompte et légale, et que chaque fois outre les dédommagemens, qu'on accorde à ceux, qui ont fait des pertes sans avoir été en faute, il soit rendu une satisfaction complète pour l'insulte faite au pavillon de Leurs Majestés.

## ARTICLE IV

Pour protéger le commerce commun de Leurs sujets, fondé sur les principes ci-dessus établis, S. M. I. d. t. l. R. et S. M. le R. de D. et de N. ont jugé à propos d'équiper séparément un nombre de vaisseaux de guerre et de frégattes, proportionné à ce but ; les escadres de chaque Puissance ayant à prendre la Station et devant être employées aux Convois, qu'exigent son commerce et sa navigation conformément à la nature et la qualité du trafic de chaque nation.

## ARTICLE V

Si pourtant il arrivoit, que les vaisseaux marchands de l'une des Puissances, se trouvassent dans un parage, où les vaisseaux de guerre de la même nation ne fussent pas stationnés, et où ils ne pourroient pas avoir recours à leurs propres Convois, alors le Commandant des vaisseaux de guerre de l'autre Puissance, s'il en est requis, doit de bonne foi et sincèrement leur prêter le secours, dont ils pourroient avoir besoin, et en tel cas, les vaisseaux de guerre et frégattes de l'une des Puissances serviront de soutien et d'appui aux vaisseaux marchands de l'autre, bien entendu cependant, que les réclamans n'auroient fait aucun commerce illicite, ni contraire aux principes de la neutralité.

## ARTICLE VI

Cette Convention n'aura point d'effet rétroactif et par conséquent on ne prendra aucune part aux différends nés avant sa conclusion, à moins qu'il ne soit question d'actes de violences continués tendant à fonder un système oppressif, pour toutes les nations neutres de l'Europe en général.

## ARTICLE VII

S'il arrivoit malgré tous les soins les plus attentifs et les plus amicaux, employés par les deux Puissances et malgré l'observation de la neutralité la plus parfaite de Leur part, que les Vaisseaux marchands de S. M. I. d. t. l. R. et de S. M. le R. de D. et de N. fussent insultés, pillés, ou pris par les vaisseaux de guerre ou armateurs de l'une ou l'autre Puissance en guerre, alors le Ministre de la partie lésée auprès de la Cour dont les vaisseaux de guerre ou armateurs auront commis de tels attentats, y fera des représentations, réclamera les vaisseaux marchands enlevés, et insistera sur les dédommagemens convenables, en ne perdant jamais de vue la réparation de l'insulte faite au pavillon. Le Ministre de l'autre partie contractante se joindra à lui et appuiera ses plaintes de la manière la plus énergique, et la plus efficace, et ainsi il sera agi d'un commun et parfait accord. Que si l'on refusoit de rendre justice sur ces plaintes, ou si l'on remettoit de la rendre d'un temps à l'autre, alors leurs Majestés useront de représailles contre la Puissance, qui la Leur refuseroit, et Elles se concerteront incessamment sur la manière la plus efficace d'effectuer ces justes représailles.



## ARTICLE VIII

S'il arrivoit que l'une ou l'autre des deux Puissances ou toutes les deux ensemble, à l'occasion ou en haine de la présente Convention, ou pour quelque cause qui y eut rapport, fut inquiétée, molestée ou attaquée, il a été également convenu que les deux Puissances feront cause commune pour se défendre réciproquement et pour travailler et agir de concert à se procurer une pleine et entière satisfaction, tant pour l'insulte faite à Leur pavillon que pour les pertes causées à Leurs sujets.

## ARTICLE IX

Cette convention arrêtée et conclue pour tout le temps que durera la guerre actuelle, servira de base aux engagements, que les conjonctures pourroient faire contracter dans la suite de temps et à l'occasion de nouvelles guerres maritimes par lesquelles l'Europe auroit le malheur d'être troublée. Ces stipulations doivent au reste être regardées comme permanentes et feront loi en matière de commerce et de navigation, et toutes les fois qu'il s'agira d'apprécier les droits des nations neutres.

## ARTICLE X

Le but et l'objet principal de cette convention étant d'assurer la liberté générale du commerce et de la navigation, S. M. I. d. t. I. R. et S. M. le R. de D. et de N. conviennent et s'engagent d'avance à consentir, que d'autres Puissances également neutres y accèdent et qu'en en adoptant les principes, Elles en partagent les obligations ainsi que les avantages.

## ARTICLE XI

Afin que les Puissances en guerre ne prétendent cause d'ignorance relativement aux arrangemens pris entre Leurs dites Majestés, les deux hautes Parties Contractantes communiqueront amicalement à toutes les Puissances belligérantes les mesures qu'Elles ont concertées entre Elles, d'autant moins hostiles, qu'elles ne sont au détriment d'aucune autre; mais tendent uniquement à la sûreté du commerce et de la navigation de Leurs sujets respectifs.

## ARTICLE XII

La présente convention sera ratifiée par les deux Parties Contractantes et les ratifications échangées en bonne et due forme dans l'espace de six semaines à compter du jour de la date de la signature ou plutôt si faire se peut. En foi de quoi nous soussignés, en vertu de nos pleinpouvoirs, l'avons signée et y avons apposé les cachets de nos armes.

Fait à Copenhague le 9. jour du mois de Juillet, l'an de grâce mil sept cent quatre-vingts.

(L. S.) CHARLES D'OSTEN *nommé* SACKEN

(L. S.) O. THOTT

(L. S.) J. SCHACK RATHLOW

(L. S.) J. EICKSTEDT

(L. S.) A. P. BERNSTORFF

## Separate Articles Additional to the Convention for an Armed Neutrality between Russia and Denmark and Norway of July 9, 1780<sup>1</sup>

### ARTICLE I

Comme Sa Majesté Impériale de toutes les Russies et Sa Majesté le Roi de Danemarck et de Norvège sont toujours également intéressées à veiller à la sûreté et à la tranquillité de la mer Baltique, et à la mettre à l'abri des troubles de la Guerre et des courses des armateurs; Système d'autant plus juste et plus naturel, que toutes les Puissances dont les états l'environnent jouissent de la plus profonde paix; elles sont mutuellement convenues de continuer à soutenir, que c'est une mer fermée, incontestablement telle par sa situation locale, où toutes les nations doivent et peuvent naviguer en paix et jouir de tous les avantages d'un calme parfait, et de prendre pour cet effet entre elles des mesures capables de garantir cette mer et ses côtes de toutes hostilités, pirateries et violences. Elles maintiendront aussi la tranquillité de la mer du Nord dans leurs parages, autant que les circonstances et l'intérêt de leurs états le rendront nécessaire.

### ARTICLE II

Leurs dites Majestés ne désirant aussi rien plus ardemment que le rétablissement de la paix sur des principes équitables, sentimens, que l'amour de l'humanité et l'envie de prévenir une plus grande effusion de sang, leur ont inspiré dès le commencement des dissensions, qui divisent l'Europe, se promettent réciproquement de s'attacher à ce même objet, d'aviser aux moyens, qui pourront conduire à ce but, et lorsqu'une occasion se présenteroit, de la saisir et de concourir avec des sentimens d'amitié et de confiance à un ouvrage si salutaire.

### ARTICLE III

Les situations des lieux rendant très court le terme pendant lequel les Flottes de Sa Majesté Impériale peuvent agir hors de la Baltique pour la sûreté du commerce neutre dans les autres mers; Sa Majesté le Roi de Danemarck et de Norvège s'engage de recevoir dans ses ports et de traiter absolument sur le même pied, comme les siens propres, tout vaisseau ou bâtiment Russe, qui y entrera pour hyverner; de lui faire fournir de ses magasins toutes sortes d'appareils et de provisions, dont l'équipage pourroit avoir besoin aux mêmes prix, auxquels en sont fournis les Vaisseaux de Sa Majesté; de faire prendre en un mot tous les arrangemens nécessaires, pour que ces bâtimens et leurs équipages puissent être bien soignés.

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 195; Clausen, p. 161.

## ARTICLE IV

Que si la jonction des esquadres étoit trouvée nécessaire, on agira en ce cas en tout d'après les principes d'une parfaite égalité, et lorsqu'un ou plusieurs vaisseaux viendroient à se trouver ensemble, celui des Commandants, qui aura le grade sur l'autre ou bien à grades égaux, celui qui sera le plus ancien, prendra le commandement sur les vaisseaux de guerre et frégattes des deux nations. On tachera en général de combiner les croisières autant que possible, sans une jonction formelle afin de former de cette manière une espèce de chaîne et de se donner la main au besoin : quant au salut, on se conformera constamment à ce qui est stipulé à cet égard dans les conventions entre les deux nations.

## ARTICLE V

A l'époque plus ou moins éloignée de la paix entre les Puissances bellicérantes, Sa Majesté Impériale de toutes les Russies, et Sa Majesté le Roi de Danemarck et de Norvège s'emploieront de la manière la plus efficace auprès des Puissances maritimes en général, pour faire recevoir et reconnoître universellement dans toutes les guerres maritimes, qui par la suite du tems pourroient survenir, le système de neutralité et les principes établis dans la présente convention, servant à former la base d'un code maritime universel.

## ARTICLE VI

Dès que cette Convention sera ratifiée, et que l'échange en aura été fait, les hautes parties contractantes prendront soin de la communiquer, aux articles séparés près, de bonne foi et conjointement et d'un commun accord, par leurs ministres accrédités aux cours étrangères, et nommément à celles qui sont actuellement en guerre. Pour agir avec une parfaite uniformité pour cette fin, on joint ici la formule de l'acte que les ministres respectifs remettront à cette occasion.

Ces articles séparés seront censés et regardés comme faisant partie de la convention même et auront la même force et valeur, que s'ils étoient insérés de mot à mot dans la dite convention conclue le même jour entre les deux hautes Parties contractantes. Ils seront ratifiés de même et les ratifications échangées dans le même tems.

En foi de quoi nous soussignés en vertu de nos pleinpouvoirs, les avons signés et y avons apposé les cachets de nos armes.

Fait à Copenhague le 9. jour du mois de Juillet, l'an de grâce mil sept cent quatre vingt.

(L. S.) CHARLES D'OSTEN *nommé* SACKEN

(L. S.) O. THOTT

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(L. S.) A. P. BERNSTORFF

**Declaration of the King of Sweden to the Courts of London, Versailles and Madrid, July 21, 1780<sup>1</sup>**

Depuis le commencement de la présente guerre le Roi a eu soin de faire connoître sa façon de penser à toute l'Europe. Il s'est imposé la loi d'une parfaite neutralité.

Il en a rempli les devoirs avec une exactitude scrupuleuse; et il a cru pouvoir jouir en conséquence des droits attachés à la qualité d'un Souverain absolument neutre: malgré cela ses sujets commerçans ont été obligés de réclamer sa protection, et Sa Majesté s'est trouvée dans la nécessité de la leur accorder. Pour remplir cet objet, le Roi fit armer un certain nombre de vaisseaux de guerre dès l'année passée. Il en employa une partie sur les côtes de son royaume, et l'autre à servir de convoi aux bâtimens marchands Suédois dans les différentes mers où le commerce de ses sujets les faisoit naviguer. Il fit part de ces mesures aux Puissances belligérantes; et il se préparoit à les continuer dans le courant de cette année, lorsque d'autres cours qui avoient également adopté la neutralité, lui firent part des dispositions, où elles se trouvoient conformes à celles du Roi et tendantes au même but. L'Impératrice de Russie fit remettre une déclaration aux Cours de Londres, de Versailles et de Madrid, par laquelle elle les instruisoit de la résolution où elle étoit de défendre le commerce de ses sujets et le droit universel des nations neutres; Cette déclaration portoit sur des principes si justes du droit des gens et des traités subsistans, qu'il ne parut pas possible de les révoquer en doute. Le Roi les a trouvés entièrement d'accord avec sa propre cause, avec le traité conclu en 1660 entre la Suède et l'Angleterre, et celui de la France et de la Suède en 1741; et Sa Majesté n'a pu se dispenser de reconnoître et d'adopter ces mêmes principes non seulement par rapport aux Puissances avec lesquelles ces dits traités sont en vigueur; mais aussi par rapport à celles qui se trouvent déjà impliquées dans la présente guerre, ou qui pourront le devenir dans la suite, et avec lesquelles le Roi est dans le cas de n'avoir point de traité à réclamer, c'est la loi universelle; et au défaut des engagemens particuliers, celle-la devient obligatoire pour toutes les nations. En conséquence le Roi déclare actuellement de nouveau, qu'il observera la même neutralité et avec la même exactitude qu'il l'a fait par le passé. Il défendra à ses sujets sous de graves peines de s'écarter en manière quelconque des devoirs que leur impose une pareille neutralité; mais il protégera leur commerce légitime par tous les moyens possibles, lorsqu'ils le feront conformément aux principes ci-dessus mentionnés.

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 185.

**Convention for an Armed Neutrality between Russia and Sweden,  
August 1, 1780<sup>1</sup>**

La présente guerre maritime, allumée entre la Grande-Bretagne d'un côté, et la France et l'Espagne de l'autre, ayant porté un préjudice notable au commerce et à la navigation des nations neutres, S. M. le Roi de Suède et S. M. l'Impératrice de toutes les Russies, toujours attentives à concilier leur dignité et leurs soins pour la sûreté et le bonheur de leurs sujets, avec les égards, qu'elles ont si souvent manifestés, pour les droits des peuples en général, ont reconnu la nécessité où elles se trouvent, de régler dans les circonstances présentes, leur conduite d'après ces sentimens.

S. M. Impériale de toutes les Russies a avoué à la face de l'Europe, au moyen de sa déclaration en date du 28. Février 1780. remise aux Puissances actuellement en guerre, les principes puisés dans le droit primitif des nations, qu'elle réclame et qu'elle a adopté pour règle de sa conduite pendant la guerre actuelle. Cette attention de l'Impératrice à veiller au maintien des droits communs des peuples, ayant été applaudie par toutes les nations neutres, les a réunies dans une cause, qui regarde la défense de leurs intérêts les plus chers, et les a porté à s'occuper sérieusement d'un objet précieux pour les temps présents et à venir, en tant qu'il importe de former et de réunir en un corps de système permanent et immuable, les droits, prérogatives, bornes et obligations de la neutralité. S. M. le Roi de Suède pénétré de ces mêmes principes, les a également établis et réclamés dans la déclaration, qu'il a fait remettre le 21. Juillet 1780 aux trois Puissances belligérantes en conformité de celle de la Russie et pour le soutien desquels, S. M. Suédoise a même fait armer une partie considérable de sa flotte. De là est résulté l'accord et l'unanimité avec lesquels S. M. le Roi de Suède et S. M. l'Impératrice de toutes les Russies, en conséquence de leur amitié et de leur confiance réciproque, ainsi que de la conformité des intérêts de leurs sujets, ont jugé à propos de donner au moyen d'une convention formelle une sanction solennelle aux engagements mutuels à prendre. Pour cet effet leurs dites Majestés ont choisi et nommé pour leurs Plénipotentiaires, savoir, S. M. le Roi de Suède, le Sieur Frédéric Baron de Nolken, son Envoyé Extraordinaire près de la Cour de Russie, Chambellan, Commandeur de l'Ordre Royal de l'Etoile-polaire et Chevalier de Ceux de l'Epée et de St. Jean, et S. M. l'Impératrice de toutes les Russies, le Sieur Nikita Comte de Panin, son Conseiller privé actuel, Sénateur, Chambellan actuel et Chevalier des Ordres de St. André, de St. Alexandre-Newsky et de St. Anne, et le Sieur Jean Comte d'Ostermann, son Vice-Chancelier, Conseiller privé et Chevalier des Ordres de St. Alexandre-Newsky et de St. Anne. Lesquels, après avoir échangé entre eux leurs pleinpouvoirs, trouvés en bonne et due forme, ont arrêté et conclu les articles suivans.

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 198.

## ARTICLE I

Leurs dites Majestés, étant sincèrement résolues d'entretenir constamment l'amitié et l'harmonie la plus parfaite avec les Puissances actuellement en guerre, et de continuer à observer la neutralité la plus stricte et la plus exacte, déclarent vouloir tenir la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de leurs sujets, avec qui que ce soit des Puissances déjà en guerre, ou qui pourroient y entrer dans la suite.

## ARTICLE II

Pour éviter toute équivoque et tout mal-entendu sur ce qui doit être qualifié de contrebande, S. M. le Roi de Suède, et S. M. l'Impératrice des toutes les Russies déclarent, qu'elles ne reconnoissent pour telles, que les marchandises comprises sous cette dénomination dans les traités, qui subsistent entre Leurs dites Majestés et l'une ou l'autre des Puissances belligérantes; S. M. Suédoise se référant nommément à cet égard à l'Art. XI. de son traité de commerce avec la Grande-Bretagne, et à la teneur du traité préliminaire de commerce, conclu entre les deux Couronnes de Suède et de France en 1741; et quoique dans ce dernier, la définition de la contrebande, ne se trouve pas nommément expliquée, cependant, comme les deux royaumes y ont stipulé, de se regarder réciproquement comme *gens amicissima* et qu'au reste la Suède s'y est réservé les mêmes avantages, dont jouissent en France, d'ancien droit, les villes Hanséatiques, avantages solennellement confirmés par les traités d'Utrecht, le Roi n'a rien à y ajouter. Vis-à-vis de l'Espagne, S. M. n'ayant pas de Traité particulier avec cette Couronne, Elle y étend les obligations des susdits traités, entièrement fondés dans le droit naturel. S. M. Impériale de toutes les Russies de son coté se rapporte aussi nominément aux Articles X. et XI. de son traité de commerce avec la Grande-Bretagne. Elle en étend les obligations, entièrement fondées dans le droit naturel, aux Couronnes de France et d'Espagne, qui n'ont point été liées jusqu'ici avec son empire, par aucun engagement formel, purement relatif au commerce.

## ARTICLE III

La contrebande déterminée et exclue du commerce des nations neutres, en conformité des traités et stipulations expresses, subsistantes entre les hautes Parties Contractantes et les Puissances en guerre, et nommément en vertu du traité de commerce, conclu entre la Suède et la Grande-Bretagne le 21. Octobre 1661, et du traité préliminaire de commerce entre la Suède et la France, fait en 1741, ainsi que du traité de commerce conclu entre la Russie et la Grande-Bretagne le 20. juin 1766. Sa Maj. le Roi de Suède et Sa Maj. Impériale de toutes les Russies, entendent et veulent, que tout autre trafic soit et reste par-

faitement libre. Leurs Majestés après avoir déjà réclamé dans leurs déclarations, faite aux Puissances belligérantes, les principes généraux du droit naturel, dont la liberté du commerce et de la navigation, de même que les droits des peuples neutres sont une conséquence directe, ont résolu de ne les point laisser plus long-temps dépendre d'une interprétation arbitraire, suggérée par des intérêts isolés et momentanés. Dans cette vue elles sont convenues :

1) Que tout vaisseau peut naviguer librement de port en port et sur les côtes des nations en guerre.

2) Que les effets, appartenans aux sujets des dites Puissances en guerre, soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande.

3) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la disposition de la Puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.

4) Que les vaisseaux neutres ne peuvent être arrêtés, que sur de justes causes et faits évidens ; qu'ils soient jugés sans retard, que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre les dédommagemens, qu'on accorde à ceux, qui ont fait des pertes sans avoir été en faute, il soit rendu une satisfaction complète pour l'insulte faite au pavillon de Leurs Majestés.

#### ARTICLE IV

Pour protéger le commerce commun de leurs sujets, fondé sur les principes ci-dessus établis, S. M. le Roi de Suède et S. M. Impériale de toutes les Russies, ont jugé à propos d'équiper séparément un nombre de vaisseaux de guerre et de frégates proportionné à ce but, les escadres de chaque Puissance ayant à prendre la station, et devant être employées aux Convois, qu'exigent son commerce et sa navigation, conformément à la nature et la qualité du trafic de chaque nation.

#### ARTICLE V

Si pourtant il arrivoit, que les vaisseaux marchands de l'une des Puissances, se trouvassent dans un parage, où les vaisseaux de guerre de la même nation ne fussent pas stationnés, et où ils ne pourroient pas avoir recours à leurs propres convois, alors le Commandant des vaisseaux de guerre de l'autre Puissance, s'il en est requis, doit de bonne foi et sincèrement leur prêter les secours, dont ils pourront avoir besoin, et en tel cas, les vaisseaux de guerre et frégates de l'une des Puissances serviront de soutien et d'appui aux vaisseaux marchands de l'autre ; bien entendu cependant, que les réclamans n'auroient fait aucun commerce illicite, ni contraire aux principes de la neutralité.

## ARTICLE VI

Cette convention n'aura point d'effet rétroactif, et par conséquent on ne prendra aucune part aux différends nés avant sa conclusion, à moins qu'il ne soit question d'actes de violence continués, tendans à fonder un système oppressif pour toutes les nations neutres de l'Europe en général.

## ARTICLE VII

S'il arrivoit malgré tous les soins les plus attentifs et les plus amicaux, employés par les deux Puissances, et malgré l'observation de la neutralité la plus parfaite de leur part, que les vaisseaux marchands de S. M. le Roi de Suède et de S. M. Impériale de toutes les Russies, fussent insultés, pillés ou pris par les vaisseaux de guerre ou armateurs auroient commis de tels attentats, y fera des représentations, réla partie lésée auprès de la Cour dont les vaisseaux de guerre ou armateurs auroient commis de tels attentats, y sera des représentations, réclamera le vaisseau marchand enlevé, et insistera sur les dédommagemens convenables, en ne perdant jamais de vue la réparation de l'insulte faite au pavillon. Le Ministre de l'autre partie contractante se joindra à lui, et appuiera ses plaintes de la manière la plus énergique et la plus efficace, et ainsi il sera agi d'un commun et parfait accord. Que si l'on refusoit de rendre justice sur ces plaintes, ou si l'on remettoit de la rendre d'un temps à l'autre, alors Leurs Majestés useront de représailles contre la Puissance, qui la Leur refuseroit et Elles se concerteront incessamment sur la manière la plus efficace d'effectuer ces justes représailles.

## ARTICLE VIII

S'il arrivoit que l'une ou l'autre des deux Puissances, ou toutes les deux ensemble, à l'occasion ou en haine de la présente convention, ou pour quelque cause qui y eut rapport, fut inquiétée molestée ou attaquée, il a été également convenu, que les deux Puissances feront cause commune, pour se défendre réciproquement, et pour travailler et agir de concert, à se procurer une pleine et entière satisfaction, tant pour l'insulte faite à leur pavillon, que pour les pertes causées à leurs sujets.

## ARTICLE IX

Cette convention arrêtée et conclue pour tout le temps, que durera la guerre actuelle, servira de base aux engagemens, que les conjonctures pourroient faire contracter dans la suite de temps, et à l'occasion des nouvelles guerres maritimes, par lesquelles l'Europe auroit le malheur d'être troublée. Ces stipulations doivent au reste être regardées comme permanentes et feront loi en matière de commerce et de navigation, et toutes les fois, qu'il s'agira d'apprécier les droits des nations neutres.



## ARTICLE X

Le but et objet principal de cette convention étant d'assurer la liberté générale du commerce et de la navigation, S. M. le Roi de Suède et S. M. Imp. de toutes les Russies conviennent et s'engagent d'avance à consentir, que d'autres Puissances également neutres y accèdent, et qu'en adoptant les principes, Elles en partagent les obligations, ainsi que les avantages.

## ARTICLE XI

Afin que les Puissances en guerre ne prétendent cause d'ignorance relativement aux arrangemens, pris entre Leurs dites Majestés, les deux hautes Parties Contractantes communiqueront amicalement à toutes les Puissances belligérantes, les mesures qu'Elles ont concertées entre Elles, d'autant moins hostiles, qu'elles ne sont au détriment d'aucune autre, mais tendent uniquement à la sûreté du commerce et de la navigation de Leurs sujets respectifs.

## ARTICLE XII

La présente Convention sera ratifiée par les deux Parties Contractantes, et les ratifications échangées en bonne et due forme dans l'espace de deux mois, à compter du jour de la date de la signature, ou plutôt si faire se peut.

En foi de quoi nous soussignés en vertu de nos pleinpouvoirs, l'avons signé et y avons apposé les cachets de nos armes. Fait à St. Pétersbourg le 21 Juillet/1. Août l'an de grâce mil sept cent quatrevingt.

(L. S.) FRÉDÉRIC NOLKEN

(L. S.) CT. N. PANIN

(L. S.) CT. JEAN D'OSTERMANN

**Separate Articles Additional to the Convention for an Armed Neutrality between Russia and Sweden of August 1, 1780<sup>1</sup>**

[Ces 6. articles sont de mot à mot de la même teneur que ceux entre la Russie et le Danemarc.<sup>2</sup> si ce n'est qu'à l'article III. entre la Russie et la Suède il est ajouté:] Sa Majesté Impériale s'engage aux mêmes obligations envers Sa Majesté le Roi de Suède; et ses commandans dans ses ports de la mer Baltique auront en conséquence les ordres de garder les mêmes procédés envers les vaisseaux de Guerre et tous les bâtimens Suédois lorsqu'ils en seront requis.

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 205.

<sup>2</sup>*Ante*, p. 649.

**Russian Memorandum to the Belligerent Powers notifying them of the Accession of Denmark and Norway and Sweden to the System of Armed Neutrality, November 7, 1780<sup>1</sup>**

Le soussigné envoyé etc. a reçu ordre de sa cour de communiquer à celle de . . . une convention arrêtée et signée à St. Pétersbourg le 28. Juin/9. Juil. entre Sa Majesté Impériale de toutes les Russies sa Souveraine et Sa Majesté le Roi de Danemarc et de Norvège le 21. Juill./1. Août entre S. M. I. et Sa Maj. le Roi de Suède qui a pour seul et unique objet le maintien des droits et libertés appartenans à toute nation neutre. Empressé de s'en acquiter, il prie le ministère de Sa Majesté . . . de vouloir bien la porter à la connoissance du Roi. Sa Majesté retrouvera dans tous les points et articles de ce traité l'expression des principes d'une impartialité et neutralité parfaites, ainsi que des sentimens de justice et d'équité, qui guident constamment l'Impératrice sa Souveraine, et qui l'ont décidée à prendre les mesures, propres à mettre ses sujets à l'abris des pertes, vexations et dangers, auxquels eux, leur commerce et leur navigation pourroient être exposés par les malheureuses suites de la guerre maritime, qui trouble le repose de l'Europe.

L'Impératrice se flatte et se promet de l'amitié et de l'esprit de justice dont est animé S. M. . . . qu'elle reconnoitra l'équité et l'intention pacifique de cette convention, et qu'elle fera tenir la main à l'exécution des ordres, qu'elle a fait expédier à tous ses Officiers et Commandants de ses vaisseaux de Guerre, ainsi qu'à ses armateurs de respecter les droits et les libertés des nations neutres, tout comme Sa Majesté Impériale a pourvu à ce que ses sujets ne fassent point de commerce illicite au désavantage de l'une ou l'autre des Puissances en guerre.

**Declaration of the States-General of the Netherlands regarding Their Accession to the Conventions for an Armed Neutrality between Russia and Denmark and Norway, and Russia and Sweden, January, 1781<sup>2</sup>**

Faisons savoir, qu'ayant été invités d'accéder comme parties Principales contractantes à la double convention conclue à Copenhague le 28. Juin/9. Juill. entre Sa Majesté Impériale de toutes les Russies, et

<sup>1</sup>*Ibid.*, p. 208.

<sup>2</sup>*Ibid.*, p. 220.

Sa Majesté le Roi de Danemarc et de Norvège, et à St. Pétersbourg le 21. Juill./1. Août 1780 entre Sa Majesté Impériale de toutes les Russies at Sa Majesté le Roi de Suède, nous certifions formellement par cette présente déclaration, qu'ayant également à cœur, le maintien de la liberté Générale du commerce et de la navigation neutre, et étant animés à cet égard, des mêmes sentimens que leurs dites Majestés, nous accédons dans la meilleure forme, comme partie principale contractante à la susdite double convention, et nous nous engageons en conformité de ce qui a été exprimé plus amplement dans l'acte d'accession et l'acte séparé signé le 24. Décembre 1780 à St. Pétersbourg par les Plénipotentiaires de Sa Majesté Impériale et par ceux, qui y ont été autorisés de notre part à toutes les stipulations, clauses et articles, auxquels nous accédons dans toute leur forme et teneur.

Nous nous attendons, que Sa Majesté Impériale de tous les Russies et leurs Majestés les Rois de Danemarc et de Suède<sup>1</sup> déclareront également par un acte formel d'avoir reçu et accepté cette notre Déclaration et que leurs Majestés Impériales et Royales nous reconnoîtront comme partie principale contractante à la double convention de Copenhague et de St. Pétersbourg.

En foi de quoi cette présente Déclaration, qui sera échangée à St. Pétersbourg contre une pareille d'acceptation de la part de Sa Majesté le Roi de Danemarc et de Norvège (de Suède) l'entremise de la Russie a été donnée à la Haye, sous le grand sceau de nos Etats et paraphé par M. le Président de l'assemblée et signé de notre Greffier.

**Declaration of the States-General of the Netherlands to the Belligerent Powers regarding Their Accession to the Conventions for an Armed Neutrality between Russia and Denmark and Norway, and Russia and Sweden, January, 1781<sup>2</sup>**

L'article X. de la double convention de Copenhague et de St. Pétersbourg communiquée à celle de Londres (Versailles, Madrid) énonçant le consentement des hautes parties contractantes à l'accession des autres Puissances, également neutres; Leurs Hautes Puissances les Seigneurs Etats-Généraux des Provinces-Unies se sont déterminées à former de concert avec Sa Majesté Impériale de toutes les Russies

<sup>1</sup>Dans l'exemplaire destiné pour la Suède, c'est la Suède qui est nommée en premier lieu, et dont la convention est citée avant celle avec le Danemarc.

<sup>2</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 221. La même déclaration (*mutatis mutandis*) fut remise aux Puissances Belligérantes par l'Impératrice de Russie, par le Roi de Danemarc et par celui de Suède.

et Leurs Majestés les deux Rois ses Alliés, une union fondée sur un système juste et raisonnable de neutralité sur mer et ayant pour but le maintien des Intérêts et des droits de leurs sujets. Pour cet effet elles ont accédé en qualité de Parties Principales contractantes par un acte formel signé à St. Pétersbourg, le 24. Dec. 1780 aux conventions de Copenhague et de St. Pétersbourg conclues le 28 Juin/9 Juill. et le 21 Juill./1 Août 1780 entre Sa Majesté Imp. de toutes les Russies et Leurs Majestés les Rois de Danemarc et de Suède.

Le soussigné Ambassadeur (Envoyé) ayant l'honneur de communiquer cet acte au Ministère de Sa Maj. Britannique (Très-Chrétienne, Catholique) le prie de vouloir bien le porter à la connoissance du Roi son Maître: Sa Majesté y retrouvera une nouvelle expression des principes d'impartialité, dont LL. HH. PP. ses maîtres font constamment profession, et qui répondent si bien aux sentimens de justice et d'équité qui les ont décidées à adopter le seul moyen propre à mettre leurs sujets à l'abri des pertes, vexations et dangers, auxquels eux, leur commerce et leur navigation pourroient être exposés par les malheureuses suites de la guerre maritime qui trouble le repos de l'Europe.

Leurs hautes Puissances se flattent et se promettent de l'amitié et de l'esprit de justice, dont est animé Sa Majesté Britannique (T. C., C.) qu'elle reconnoitra l'équité et l'intention pacifique d'une telle mesure, et qu'elle fera tenir la main à l'exécution des ordres, qu'elle a fait expédier à tous les Officiers et Commandans de ses Vaisseaux de Guerre, ainsi qu'à ses armateurs, de respecter les droits et les libertés des nations neutres, tout comme LL. HH. PP. ont pourvu à ce que les sujets de la Republique ne fassent point de commerce illicite au désavantage de l'une ou de l'autre des Puissances en Guerre.

**Convention between Russia and Prussia, for the Maintenance of the Freedom of Neutral Commerce and Navigation, by which Prussia accedes to the System of Armed Neutrality, May 19, 1781<sup>1</sup>**

La justice et l'équité des principes, que Sa Majesté l'Impératrice de toutes les Russies a adoptés et avoués à la face de l'Europe par sa Déclaration du 28. Février 1780. remises à toutes les puissances belligérantes, ont déterminé Sa Majesté le Roi de Prusse, à vouloir prendre une part aussi directe que possible au Système glorieux de neutralité qui en a résulté, avec l'applaudissement universel de toutes les nations,

<sup>1</sup>*Ibid.*, p. 245.

non seulement en avouant ces principes fondés sur la justice et le droit des gens, mais même en y accédant, et les garantissant par un Acte formel. Cette détermination de Sa Majesté Prussienne répondant parfaitement au désir de Sa Majesté Impériale de toutes les Russies de leur donner une base stable et solide, en les faisant reconnoître solennellement par toutes les puissances, comme les seuls capables d'établir la sûreté du commerce et de la navigation des nations neutres en général, leurs Majestés se sont portées d'un commun accord à entrer en négociation sur un objet qui les intéresse au même degré, en tant qu'il peut être approprié au bien et à l'avantage de leurs sujets respectifs, et pour cet effet, Elles ont choisi, nommé et autorisé, savoir : Sa Majesté le Roi de Prusse, le Sieur Comte de Goertz, Son Ministre d'état, et Son Envoy extraordinaire à la Cour Impériale de Russie; et Sa Majesté Impériale de toutes les Russies, le Sieur Nikita Comte Panin, Son Conseiller privé actuel, Sénateur, Chambellan actuel, et Chevalier des ordres de St. André, de St. Alexandre Newsky, et de St. Anne, le Sieur Jean Comte d'Ostermann, Son Vice-Chancelier, Conseiller privé et Chevalier des ordres de St. Alexandre Newsky, et de St. Anne; le Sieur Alexandre de Besborodka, Major-Général de ces Armées, et Colonel commandant le régiment de Kiovie de la milice de la petite Russie; et le Sieur Pierre de Bacounin, Son Conseiller d'Etat actuel, Membre du Département des affaires étrangères, et Chevalier de l'Ordre de St. Anne; lesquels, après avoir échangé entre eux leurs pleinpouvoirs trouvés en bonne et due forme, sont convenus des Articles suivans :

#### ARTICLE I

Leurs Majestés étant sincèrement résolues d'entretenir constamment l'amitié et l'harmonie la plus parfaite avec les puissances actuellement en guerre, et de continuer à observer la neutralité la plus stricte et la plus exacte, déclarent vouloir tenir la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de leurs sujets; avec qui que ce soit des puissances déjà en guerre, ou qui pourroient y entrer dans la suite.

#### ARTICLE II

Pour éviter toute équivoque et tout mal entendu sur ce qui doit être qualifié de contrebande, Sa Majesté l'Impératrice de toutes les Russies a déclaré, qu'Elle ne reconnoit pour telles, que les marchandises comprises sous cette dénomination dans les Articles X. et XI. de son Traité de commerce avec la Grande-Bretagne, dont elle a étendu les Obligations, entièrement fondées dans le droit naturel, aux Couronnes de France, et d'Espagne, qui n'ont point été liées jusqu'ici avec son Empire par aucun engagement purement relatif au commerce. Comme il n'en existe aussi aucun de cette nature entre Sa Majesté Prussienne, et les puissances actuellement en guerre, Elle déclare de son côté, qu'a

cet égard Elle veut aussi se conformer envers Elles aux obligations du susmentionné Traité de commerce entre la Russie et la Grande-Bretagne, se référant nommément aux Articles X. et XI. de ce Traité.

### ARTICLE III

La contrebande déterminée et exclue du commerce en conformité des Articles X. et XI. du susdit Traité conclu entre la Russie et la Grande-Bretagne le 20. Juin 1766. Sa Majesté le Roi de Prusse et Sa Majesté Impériale de toutes les Russies entendent et veulent, que tout autre trafic soit et reste parfaitement libre sur la base des principes généraux du droit naturel, que Sa Majesté l'Impératrice a réclamés solennellement, et dont la liberté du commerce et de la navigation, de même que les droits des peuples neutres sont une conséquence directe; et comme, pour ne point les laisser dépendre d'une interprétation arbitraire, suggérée par des intérêts isolés et momentanés, Sa Majesté Impériale de toutes les Russies a adopté et établi pour base les quatre points suivans :

1) Que tout vaisseau peut naviguer librement de port en port et sur les côtes des nations en guerre.

2) Que les effets appartenans aux sujets des dites puissances en guerre soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande.

3) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la Disposition de la puissance qui l'attaque avec des vaisseaux arrêtés, et suffisamment proches, un danger évident d'entrer.

4) Que les vaisseaux neutres ne peuvent être arrêtés que sur de justes causes et faits évidens; qu'ils soient jugés sans retard; que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre les dédommagemens, qu'on accorde à ceux qui ont fait des pertes sans avoir été en faute, il soit rendu une satisfaction complète pour l'insulte faite au pavillon.

Sa Majesté le Roi de Prusse accède à ces principes, les adopte également et les garantit de la manière la plus positive, s'engageant de les soutenir et réclamer toutes les fois, que les intérêts du Commerce et de la navigation des sujets des deux hautes parties contractantes pourront l'exiger.

### ARTICLE IV

En réciprocité de cette accession Sa Majesté l'Impératrice de toutes les Russies continuera à faire jouir le commerce et la navigation des Prussiens de la protection de ses flottes, qu'Elle leur a déjà fait accorder à la réquisition de Sa Majesté le Roi de Prusse, ayant fait expédier des Ordres à tous les Chefs de ses Escadres de protéger et défendre contre toute insulte et molestations les navires marchands Prussiens, qui se trouveront sur leur route, comme ceux d'une puissance

amie, alliée et stricte observatrice de la neutralité, bien entendu cependant, que les susdits navires ne seront employés à aucun commerce illicite, ni contraire aux règles de la neutralité la plus stricte et la plus exacte.

#### ARTICLE V

S'il arrivoit malgré tous les soins les plus attentifs, employés par les deux Puissances contractantes pour l'observation de la neutralité la plus parfaite de leur part, que les vaisseaux marchands de Sa Majesté le Roi de Prusse, et de Sa Majesté Impériale de toutes les Russies, fussent insultés, pillés, ou pris par les vaisseaux de guerre, ou armateurs de l'une ou l'autre des puissances en guerre, alors le Ministre de la partie lésée auprès de la Cour, dont les vaisseaux de guerre ou armateurs auront commis de tels attentats, y fera des représentations, réclamera le vaisseau marchand enlevé et insistera sur les dédommagemens convenables, en ne perdant jamais de vue la réparation de l'insulte faite au pavillon. Le Ministre de l'autre partie contractante, se joindra à lui, et appuyera ses plaintes de la manière la plus énergique et la plus efficace, et ainsi il sera agi d'un commun et parfait accord. Que si l'on refusoit de rendre justice sur ces plaintes, ou si on remettoit de le faire d'un tems à l'autre, alors leurs Majestés useront de représailles contre la puissance qui s'y refuseroit et Elles se concerteront incessamment sur la manière la plus propre à effectuer ces justes représailles.

#### ARTICLE VI

S'il arrivoit que l'une ou l'autre des deux Puissances contractantes ou toutes les deux ensemble, à l'occasion, ou en haine du présent Acte, ou pour quelque autre cause qui y ait rapport, fussent inquiétées, molestées ou attaquées, il a été également convenu, que les deux puissances feront cause commune pour se défendre réciproquement, et pour travailler et agir de concert, à se procurer une entière et pleine satisfaction, tant pour l'insulte faite à leur pavillon, que pour les pertes causées à leurs sujets.

#### ARTICLE VII

Le présent Acte n'aura point d'effet rétroactif, et par conséquent on ne prendra aucune part aux différens nés avant sa conclusion, à moins qu'il ne soit question d'actes de violence continués, et tendant à fonder un système oppressif pour toutes les Nations neutres de l'Europe en général.

#### ARTICLE VIII

Toutes les stipulations arrêtées dans le présent Acte doivent être regardées comme permanentes, et feront loi en matière de commerce et de navigation, et toutes les fois qu'il s'agira, d'apprécier les droits des nations neutres.

## ARTICLE IX

Le but, et l'objet principal de cet Acte étant, d'assurer la liberté générale du commerce et de la navigation, Sa Majesté Prussienne, et Sa Majesté Impériale de toutes les Russies, conviennent et s'engagent d'avance à consentir, que d'autres puissances également neutres y accèdent, et qu'en adoptant les principes qui y sont contenus, Elles en partagent les obligations, ainsi que les avantages.

## ARTICLE X

Afin que les puissances en guerre ne prétendent cause d'ignorance relativement aux engagements pris entre leurs dites Majestés, Elles les leur communiqueront amicalement, d'autant qu'ils ne sont nullement hostiles, ni au détriment d'aucune d'Elles, mais tendens uniquement à la sûreté du commerce et de la navigation de leurs sujets respectifs.

## ARTICLE XI

Le présent acte sera ratifié par les deux parties contractantes et les ratifications en seront échangées dans l'espace de six semaines, à compter du jour de la Signature, ou plutôt si faire se peut.

En foi de quoi Nous les plénipotentiaires, en vertu de nos pleins-pouvoirs l'avons signé, et y avons apposé les sceaux de nos armes.

• Fait à St. Pétersbourg ce 8. Mai 1781.

(L. S.) E. COMTE DE GOERTZ

(L. S.) C. N. PANIN

(L. S.) C. JEAN D'OSTERMANN

(L. S.) ALEXANDRE DE BESBORODKA

(L. S.) PIERRE BACOUNIN

## ARTICLES SÉPARÉS

## ARTICLE I

Comme Sa Majesté le Roi de Prusse et Sa Majesté l'Impératrice de toutes les Russies sont toujours également intéressées à veiller à la sûreté et à la tranquillité de la mer Baltique, et à la mettre à l'abri des troubles de la guerre et des courses des armateurs, système d'autant plus juste et plus naturel, que toutes les Puissances dont les Etats l'environnent, jouissent de la plus profonde paix. Elles sont mutuellement convenues de soutenir, que c'est une mer fermée, incontestablement telle par sa situation locale, où toutes les nations doivent et peuvent naviguer en paix, et jouir de tous les avantages d'un calme parfait, et de prendre pour cet effet entre Elles des mesures capables de garantir cette mer et ses côtes de toutes hostilités, pirateries et violences.



## ARTICLE II

Le gros tems, ou quelque autre circonstance, pouvant obliger des bâtimens Russes à se réfugier dans un port Prussien, soit pour y hyverner, soit pour s'y radouber, ou se mettre à couvert, S. M. le Roi de Prusse s'engage, de les y faire recevoir et traiter comme ceux d'une puissance amie et intime alliée, en leur faisant fournir à un prix juste et raisonnable, tant les matériaux nécessaires pour le radoub, que les provisions, dont l'équipage pourroit avoir besoin pour son entretien, et de faire prendre en un mot tous les arrangemens nécessaires, pour que ces bâtimens et leurs équipages soyent traités et soignés de la manière la plus amicale.

## ARTICLE III

A l'époque plus ou moins éloignée de la paix entre les Puissances belligérantes, S. M. le Roi de Prusse, et S. M. l'Impératrice de toutes les Russies s'employeront de la manière la plus efficace auprès des puissances maritimes en général, pour faire recevoir et reconnoître universellement dans toutes les guerres maritimes qui, par la suite du tems pourront survenir, le système de neutralité, et les principes établis dans le présent Acte, servant à former la base d'un Code maritime universel.

## ARTICLE IV

Dès que cet Acte sera ratifié et que l'échange en aura été faite, les hautes parties contractantes prendront soin de le communiquer, aux articles séparés près, de bonne foi, conjointement et d'un commun accord par leurs Ministres accrédités aux Cours étrangères, et nommément à celles qui sont actuellement en guerre.

Ces articles séparés seront censés et regardés comme faisant partie de l'acte même, et auront la même force et valeur, que s'ils étaient insérés mot à mot dans le dit acte, conclu le même jour entre les deux hautes parties contractantes. Ils seront ratifiés de même et les ratifications échangées dans le même tems.

En foi de quoi Nous les plénipotentiaires, en vertu de nos pleins-pouvoirs les avons signés, et y avons apposé les sceaux de nos armes.

Fait à St. Pétersbourg ce 8. May 1817.

(L. S.) COMTE DE GOERTZ

(L. S.) C. N. PANIN

(L. S.) C. JEAN D'OSTERMANN

(L. S.) ALEXANDRE DE BESBORODKA

(L. S.) PIERRE BACOUNIN

**Act of Accession of the Emperor of the Romans to the System of Armed Neutrality, October 9, 1781<sup>1</sup>**

Joseph second, par la grâce de Dieu Empereur des Romains, toujours Auguste, Roi d'Allemagne et de Jérusalem, de Hongrie et de Bohême, de Dalmatie, de Croatie, d'Esclavonie et Gallicie et de Lodomerie, Archiduc d'Autriche, Duc de Bourgogne et de Lorraine, Grand-Duc de Toscane, Grand Prince de Transylvanie, Duc de Milan, de Mantoue, de Parme etc. Comte de Habsbourg, de Flandres, de Tyrol etc. etc.

Ayant été invité amicalement par Sa Majeste l'Impératrice de toutes les Russies, de concourir avec Elle à la consolidation des principes de neutralité sur Mer, tendant au maintien de la liberté du commerce maritime et de la navigation des Puissances neutres, qu'Elle a exposé dans la déclaration du 28. Février 1780 remise de Sa part aux Puissances belligérantes, lesquels principes portent en substance :

Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre.

Que les effets appartenans aux sujets des Puissances en guerre soient libres sur les vaisseaux neutres à l'exception de marchandises de contrebande.

Qu'il ne soit considéré comme telles, que les marchandises énoncées dans les Articles X. et XI. du Traité de commerce, conclu entre la Russie et la Grande-Bretagne le 20. Juin 1766.

Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination, qu'à celui, où il y a par la disposition de la Puissance, qui l'attaque avec des vaisseaux suffisamment proches, un danger évident d'entrer.

Enfin que ces principes servent de règle dans les procédures et les jugemens sur la légalité des prises.

Et Sa dite Majesté Impériale de toutes les Russies, Nous ayant proposé à cet effet de manifester par un Acte d'accession formelle non seulement notre pleine adhésion à ces mêmes principes, mais encore notre concours immédiat aux mesures, pour en assurer l'exécution, que Nous adopterions de notre côté, en contractant réciproquement avec Sa dite Majesté les engagements et stipulations suivans, sçavoir :

1) Que de part et d'autre on continuera d'observer la neutralité la plus exacte, et tiendra la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de Leurs sujets respectifs avec qui que ce soit des Puissances déjà en guerre, ou qui pourroient y entrer dans la suite.

2) Qui si malgré tous les soins employés à cet effet, les vaisseaux marchands de l'une des deux Puissances fussent pris ou insultés par des vaisseaux quelconque des Puissances belligérantes, les plaintes de la Puissance lésée seront appuyées de la manière la plus efficace par

<sup>1</sup>F. Martens, *Traités et Conventions conclus par la Russie*, vol. 2, p. 122.

l'autre, que si l'on refusoit de rendre justice sur ces plaintes, Elles se concerteront incessamment sur la manière la plus propre à se la procurer par de justes représailles.

3) Que s'il arrivoit, que l'une ou l'autre des deux Puissances ou toutes les deux ensemble à l'occasion ou en haine du présent accord fut inquiétée, molestée ou attaquée, qu'alors Elles feront cause commune entre Elles pour se défendre réciproquement, et pour travailler de concert à se procurer une pleine et entière satisfaction, tant pour l'insulte faite à Leur pavillon, que pour les pertes causées à Leurs sujets.

4) Que ces stipulations seront considérés de part et d'autre comme permanentes et faisant règle toutes les fois qu'il s'agira d'apprécier les droits de neutralité.

5) Que les deux Puissances communiqueront amicalement Leur présent concert mutuel à toutes les Puissances, qui sont actuellement en guerre.

Nous voulant par un effet de l'amitié sincère, qui Nous unit heureusement à S. M. l'Impératrice de toutes les Russies, ainsi que pour le bien-être de l'Europe en général, et de nos pays et sujets en particulier, contribuer de Notre côté à l'exécution de vûes, de principes et de mesures aussi salutaires que conformes aux notions les plus évidentes du droit des gens, avons résolu d'y accéder, comme Nous y accédons formellement en vertu du présent Acte, promettant et Nous engageant solennellement, de même que Sa Majesté l'Impératrice de toutes les Russies s'engage envers Nous d'observer, exécuter et garantir tous les points et stipulations ci-dessus.

En foy de quoi Nous avons signés la présente de Notre propre main et l'avons muni de Notre sceau.

Donné à Vienne le 9. Octobre 1781.

(L. S.) JOSEPH

W. KAUNITZ-RIETBURG  
ANT. SPIELMANN

**Convention between Russia and Portugal for the Maintenance of the Freedom of Neutral Commerce and Navigation, by which Portugal accedes to the System of Armed Neutrality, July 24, 1782<sup>1</sup>**

Sa Maj. Imp. de toutes les Russies ayant invité S. M. la Reine de Portugal de concourir avec elle à la consolidation des principes de neu-

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 263.

tralité sur mer et au maintien de la liberté du commerce maritime et de la navigation des Puissances neutres, conformément à sa déclaration du 28. Février 1780 remise de sa part aux Puissances belligérantes; la Reine par un effet de l'amitié sincère qui unit S. M. Imp. à S. M. très-fidèle, aussi bien que pour l'intérêt de l'Europe en Général et celui de ses pays et sujets en particulier, a voulu contribuer de son côté à l'exécution des principes et des mesures aussi salutaires que conformes aux notions les plus évidentes du droit des gens. Et en conséquence elle s'est déterminée à nommer, de concert avec S. M. la Reine de Portugal, des Plénipotentiaires, et de les charger de conclure une Convention, dont l'esprit et le contenu répondroient en toutes choses à ces mêmes intentions.

Pour cet effet Leurs dites Majestés ont choisi, nommé et autorisé, S. M. Imp. de toutes les Russies le Sr. Jean Comte d'Ostermann Son Vice-chancelier, Conseiller privé actuel, Sénateur et Chevalier des ordres de St. Alexandre Nevsky et de St. Anne; le Sr. Alexandre Bezborodko, Major Général de ses armées, Membre du département des affaires étrangères, et Colonel commandant le régiment de Kiovie, de la milice de la Petite-Russie; et le Sr. Pierre de Bacounin, son Conseiller d'Etat actuel, Membre du département des affaires étrangères, et Chevalier de l'Ordre de Ste. Anne: Et S. M. la Reine de Portugal le Sr. François Joseph d'Horta-Machado de son Conseil, et son Ministre Plénipotentiaire auprès de la Cour Impériale de Russie; lesquels après avoir échangé entre eux leurs pleinpouvoirs trouvés en bonne et due forme, sont convenus des Articles suivans.

#### ARTICLE I

Sa Majesté l'Impératrice de toutes les Russies et Sa Majesté Très-Fidèle, convaincues de la solidité et de l'évidence invincible des principes, exposés dans la susdite déclaration du 28. Févr. 1780 et qui se réduisent en substance aux 5. points qui suivent:

1) Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre.

2) Que les effets et marchandises, appartenans aux sujets de Puissances en guerre, soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande;

3) Qu'il ne soit considéré comme tel que les marchandises énoncées dans les Art. X. et XI. du traité de commerce conclu entre la Russie et la Grande-Bretagne le 20. Juin 1766:

4) Que pour déterminer ce qui caractérise un port bloqué on n'accorde cette denomination qu'à celui où il y a par la disposition de la Puissance, qui l'attaque avec un nombre proportionné de vaisseaux suffisamment proches, un danger évident d'entrer:

5) Enfin que ces principes servent de règle dans les procédures et dans les jugemens sur la légalité des prises:

Leurs dites Majestés déclarent, que non seulement elles donnent

leur pleine adhésion aux mêmes principes, mais que dans toutes les occasions elles concourront efficacement pour les maintenir dans toute leur force et vigueur, et pour veiller à leur exécution la plus exacte.

#### ARTICLE II

Par la présente Convention il ne sera dérogé en rien aux traités actuellement subsistans entre la Cour de Russie ou de Portugal avec telle autre Cour de l'Europe que ce puisse être : Mais ces traités et les stipulations y contenues continueront à avoir pour l'une et pour l'autre la même force obligatoire comme du passé, sans que cette convention puisse jamais les invalider, ni encore moins les enfreindre.

#### ARTICLE III

Les deux Hautes Puissances contractantes continueront à observer la neutralité la plus exacte et tiendront la main à la plus rigoureuse exécution des défenses, portées contre le commerce de contrebande de leurs sujets respectifs, avec qui que ce soit des Puissances déjà en guerre, ou qui pourroient y entrer dans la suite, en comprenant notamment sous la rubrique de contrebande ce qui dans les articles ci-dessus allégués X. et XI. du traité de commerce, conclu entre la Russie et la Grande-Bretagne le 20. Juin 1766, est réputé pour tel.

#### ARTICLE IV

Si, malgré les soins employés à cet effet, les vaisseaux marchands Russes ou Portugais fussent pris ou insultés par des vaisseaux quelconques des Puissances belligérantes, les plaintes et représentations de la Puissance lésée seront appuyées de la manière la plus efficace par l'autre : Et, si contre toute attente on refusoit de rendre justice sur ces plaintes, elles se concerteront incessamment sur la manière la plus propre à se procurer une indemnisation par de justes représailles.

#### ARTICLE V

S'il arrivoit que l'une ou l'autre des deux Puissances ou toutes les deux ensemble, à l'occasion ou en haine de la présente convention, fussent inquiétées ou molestées, alors elles feront cause commune entre elles pour se défendre réciproquement, et pour travailler de concert à se procurer une pleine et entière satisfaction, tant pour l'insulte faite à leur pavillon, que pour les pertes causées à leurs sujets.

#### ARTICLE VI

Les présentes stipulations seront considérées de part et d'autre comme permanentes et faisant règle toutes les fois qu'il s'agira d'apprécier les droits de neutralité.

## ARTICLE VII

Les Puissances communiqueront amicalement leur présent accord mutuel à toutes les Puissances qui sont actuellement en guerre.

## ARTICLE VIII

La présente Convention sera ratifiée par les deux Parties contractantes, et les ratifications en seront échangées dans l'espace de quatre mois à compter du jour de la signature, ou plutôt si faire se peut.

En foi de quoi Nous les Plénipotentiaires en vertu de nos pleinpouvoirs, l'avons signée et y avons apposé les sceaux de nos armes.

Fait à St. Pétersbourg le 13. Juillet 1782.

(L. S.) COMTE JEAN D'OSTERMANN

(L. S.) ALEXANDRE DE BEZBORODKO

(L. S.) PIERRE DE BACOUNIN

(L. S.) FRANC. JOSEPH D'HORTA MACHADO

**Act by which the King of the Two Sicilies Accedes to the System  
of Armed Neutrality, February 21, 1783<sup>1</sup>**

Sa Majesté Impériale de toutes les Russies occupée du soin généreux de consolider les vrais principes du droit des neutres sur mer, tendans à maintenir la liberté de leur navigation et du commerce maritime, exposés dans sa déclaration du 28. Février 1780, remise aux Puissances alors en guerre, a remarqué avec la plus grande satisfaction, combien l'adhésion successive de différentes Puissances aux mêmes principes a étendu leur effet salutaire. Par ce motif et par celui d'une juste confiance dans l'amitié de Sa Majesté Sicilienne, Elle s'est déterminée à l'inviter également à raffermir par son aveu un ouvrage d'une telle importance; et Sa dite Majesté ayant reconnu dans cette démarche autant une marque d'amitié, qu'un sentiment de juste confiance envers Elle, dans la persuasion que les dits principes étoient parfaitement conformes à ceux qu'elle a constamment suivis de même que Son Auguste Père dès le moment qu'il avoit rappelé à l'existence indépendante la Monarchie de Ses Royaumes, et tels qu'on les reconnoit évidemment dans ses Traités avec la Suède de l'année 1742, avec le Danemarc de 1748, avec les Etats-Généraux des Provinces-Unies de 1753, les seuls Traités stipulés depuis l'époque que les dits Royaumes ont cessé d'ap-

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 3, p. 267.

partenir à d'autres Souverainetés, n'a pas hésité d'y répondre avec empressement.

Pour cet effet leurs Majestés ont jugé à propos de conclure un acte formel, dans lequel se trouveroient consignés les susdits principes, et ont nommé pour Leurs Plénipotentiaires, savoir: Sa Majesté Impériale de toutes les Russies, le Sieur Jean Comte d'Ostermann, Son Vice-Chancelier, Conseiller privé actuel, Sénateur et Chevalier des ordres de St. Alexandre Nevsky, de St. Wladimir de la première classe, et de Ste. Anne; le Sieur Alexandre de Bezborodko, Général-Major de Ses armées, Membre du Collège des affaires étrangères, Colonel commandant le Régiment de Kiovie de la milice de la Petite Russie, Chevalier de l'ordre de St. Wladimir de la première classe; le Sieur Pierre de Bacounin Son Conseiller d'Etat actuel, membre du Collège des affaires étrangères, Chevalier de l'ordre de St. Wladimir de la seconde classe et de celui de Ste. Anne; et Sa Majesté le Roi des deux Sicilies Don Muzio Gaëta Duc de St. Nicolas, Son Gentilhomme de la Chambre en fonction et Son Ministre Plénipotentiaire auprès de la Cour Impériale de Russie, lesquels, après avoir échangé entre eux leurs Pleinpouvoirs trouvés en bonne et due forme, sont convenus des Articles suivans:

#### ARTICLE I

Sa Majesté l'Impératrice de toutes les Russies et Sa Majesté le Roi des deux Siciles, convaincus de la solidité et de l'évidence invincible des principes exposés dans la susdite déclaration du 28. Février 1780, et qui se réduisent en substance aux cinq points qui suivent:

1) Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre.

2) Que les effets et marchandises, appartenans aux sujets des Puissances en guerre soient libres sur les vaisseaux neutres, à l'exception de la contrebande de guerre.

3) Qu'il ne soit considéré comme telle, que les marchandises énoncées dans les Articles X. et XI. du Traité de commerce conclu entre la Russie et la Grande-Bretagne le 20. Juin 1766.

4) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui où il y a par la disposition de la Puissance qui l'attaque avec un nombre proportionné de vaisseaux suffisamment proches, un danger évident d'entrer.

5) Enfin que ces principes servant de règle dans les procédures et les jugemens sur la légalité des prises, ne dérogent aux Traités subsistans actuellement entre Leurs Majestés, et d'autres Puissances, mais qu'ils les consolident encore d'avantage.

Leurs dites Majestés déclarent, que non seulement Elles donnent Leur pleine adhésion aux mêmes principes, mais que dans toutes les occasions Elles concourent efficacement pour les maintenir dans toute leur force et vigueur et pour veiller à leur exécution la plus exacte.

## ARTICLE II

Dans toute guerre, à laquelle les Hautes Parties Contractantes, en observant une parfaite neutralité, ne prendront point de part, on tiendra la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de Leurs sujets respectifs, avec qui que ce soit des Puissances déjà en guerre, ou qui pourroient y entrer dans la suite.

## ARTICLE III

La contrebande de guerre, dont le commerce est défendu aux nations neutres, sera entendue autant selon les termes des Traités subsistans entre la Russie et la Grande-Bretagne de 1766, que selon les termes des Traités en vigueur entre les Deux Siciles et le Danemarck, la Suède et la Hollande.

## ARTICLE IV

Si malgré tous les soins à employer à cet effet, les vaisseaux marchands de l'une des deux Puissances fussent pris ou insultés par des vaisseaux quelconques des Puissances belligérantes, les plaintes de la Puissance lésée seront appuyées de la manière la plus efficace par l'autre; et si l'on refusoit de rendre justice sur ces plaintes, Elles se concerteront incessamment sur la manière la plus propre pour obtenir à Leurs sujets une indemnisation plénière.

## ARTICLE V

S'il arrivoit, que l'une ou l'autre des deux Puissances, ou toutes les deux ensemble, à l'occasion ou en haine du présent accord, fut inquiétée, molestée ou attaquée, alors Elles feront cause commune entre Elles pour se défendre réciproquement et pour travailler de concert à se procurer une pleine et entière satisfaction, tant pour l'insulte faite à leur pavillon, que pour les pertes causées à leurs sujets.

## ARTICLE VI

Ces stipulations seront considérées de part et d'autre comme permanentes et faisant règle toutes les fois qu'il s'agira d'apprécier les droits de neutralité.

## ARTICLE VII

Les deux Puissances communiqueront amicalement Leur présent accord mutuel à toutes les Puissances Européennes en général.

## ARTICLE VIII

Le présent acte sera ratifié par les deux Parties contractantes, et les ratifications en seront échangées dans l'espace de quatre mois, à compter du jour de la signature, ou plutôt si faire se peut.



En foi de quoi, Nous, les Plénipotentiaires, en vertu de nos Plein-pouvoirs, l'avons signé et y avons apposé les sceaux de nos armes.

Fait à St. Pétersbourg le 10. Février 1783.

(L. S.) COMTE JEAN D'OSTERMANN

(L. S.) ALEXANDRE DE BEZBORODKO

(L. S.) PIERRE DE BACOUNIN

(L. S.) MUZIO GAETA DUC DE ST. NICOLAS

### **Convention between Russia and Sweden for the Reestablishment of an Armed Neutrality, December 16, 1800<sup>1</sup>**

Au nom de la très-sainte et indivisible Trinité.

La liberté de la navigation de la sûreté du commerce des puissances neutres ayant été compromises et les principes du droit des nations méconnus dans la présente guerre maritime, Sa Majesté le roi de Suède, et Sa Majesté l'empereur de toutes les Russies, guidés par leur amour pour la justice, et par une égale sollicitude pour tout ce qui peut concourir à la prospérité publique dans leurs états, ont jugé convenable de donner une nouvelle sanction aux principes de neutralité, qui, indéstructibles dans leur essence, ne sollicitent que le concours des gouvernemens intéressés à leur maintien, pour les faire respecter. Dans cette vue, Sa Majesté impériale, a manifesté, par la déclaration du 15. août aux cours du Nord, qu'un même intérêt engage à des mesures uniformes dans de pareilles circonstances, combien il lui tenoit à cœur de rétablir dans son inviolabilité, le droit commun à tous les peuples, de naviguer et commercer librement et indépendamment des intérêts momentanés des parties belligérantes. Sa Majesté suédoise partageoit les vœux et les sentimens de son auguste allié, et une heureuse analogie d'intérêts, en cimentant leur confiance réciproque, a déterminé la résolution de rétablir le système de la neutralité armée, qui avoit été suivi avec tant de succès pendant la dernière guerre d'Amérique, en renouvellement ses maximes bienfaisantes dans une nouvelle convention, adaptée aux circonstances actuelles.

Pour cet effet, Sa Majesté le roi de Suède et Sa Majesté impériale de toutes les Russies ont nommé pour leurs plénipotentiaires, savoir: Sa Majesté suédoise Mr. le baron Court de Stedingk, un des seigneurs du royaume de Suède, son ambassadeur extraordinaire auprès de Sa Majesté impériale de toutes les Russies, lieutenant-général dans ses armées, chambellan de la reine douairière, colonel d'un régiment d'in-

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 7, p. 173.

fanterie, chevalier commandeur de ses ordres, chevalier grand-croix de son ordre de l'Épée, et chevalier de l'ordre de France pour les mérites militaires : et Sa Majesté impériale de toutes les Russies, Mr. le comte Theodor de Rostopsin, son conseiller privé actuel, membre de son conseil, principal-ministre du collège des Affaires étrangères, directeur-général des postes de l'empire, grand-chancelier et grand-croix de l'ordre souverain de St. Jean de Jerusalem, chevalier des ordres de St. André, de St. Alexandre-Newsky et de St. Anne de la première classe, de ceux de St. Lazare, de l'annonciade, de St. Maurice et de St. Lazare, de St. Ferdinand et de St. Hubert ; lesquels après l'échange de leurs pleinpouvoirs respectifs sont convenus des articles suivans :

#### ARTICLE I

Sa Majesté le roi de Suède et Sa Majesté l'empereur de toutes les Russies déclarent, vouloir tenir la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de leurs sujets, avec qui que ce soit des puissances déjà en guerre ou qui pourroient y entrer dans la suite.

#### ARTICLE II

Pour éviter toute équivoque et tout malentendu sur ce qui doit être qualifié de contrebande, Sa Majesté le roi de Suède et Sa Majesté impériale de toutes les Russies déclarent, qu'elles ne reconnoissent pour telle que les objets suivans, savoir : canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, gibernes, selles et brides, en exceptant toutefois la quantité, qui peut être nécessaire pour la défense du vaisseau et de ceux qui en composent l'équipage ; et tous les autres articles quelconques non désignés ici, ne seront pas réputés munitions de guerre et navales ni sujets à confiscation, et par conséquent passeront librement sans être assujettis à la moindre difficulté. Il est aussi convenu que le présent article ne portera aucun préjudice aux stipulations particulières des traités antérieurs avec les parties belligérantes, par lesquels des objets de pareil genre seroient réservés, prohibés ou permis.

#### ARTICLE III

Tout ce qui peut être objet de contrebande étant ainsi déterminé et exclu du commerce des nations neutres, d'après le dispositif de l'article précédent, Sa Majesté le roi de Suède et Sa Majesté impériale de toutes les Russies entendent et veulent, que tout autre trafic soit et reste parfaitement libre. Leurs Majestés, pour mettre sous une sauvegarde suffisante les principes généraux du droit naturel, dont la liberté du commerce et de la navigation, de même que les droits des peuples neutres sont une conséquence directe, ont résolu, de ne les point laisser

plus longtems dépendre d'une interprétation arbitraire, suggérée par des intérêts isolés et momentanés. Dans cette vue elles sont convenues :

1) Que tout vaisseau peut naviguer librement de port en port, et sur les côtes des nations en guerre.

2) Que les effets appartenans aux sujets des dites puissances en guerre soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande.

3) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a, par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer, et que tout bâtiment naviguant vers un port bloqué ne pourra être regardé d'avoir contrevenu à la présente convention, que, lorsqu'après avoir été averti par le commandant du blocus de l'état du port, il tâchera d'y pénétrer en employant la force ou la ruse.

4) Que les vaisseaux neutres ne peuvent être arrêtés que sur de justes causes et faits évidents, qu'ils soient jugés sans retard, que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre les dédommagemens qu'on accorde à ceux qui ont fait des pertes, sans avoir été en contrevention, il soit rendu une satisfaction complète pour l'insulte faite au pavillon de leurs Majestés.

5) Que la déclaration de l'officier commandant le vaisseau ou les vaisseaux de la marine royale ou impériale, qui accompagneront le convoi d'un ou de plusieurs bâtimens marchands, que son convoi n'a à bord aucune marchandise de contrebande, doit suffire pour qu'il n'y ait lieu à aucune visite sur son bord ni à celui des bâtimens de son convoi.

Pour assurer d'autant mieux à ces principes le respect du à des stipulations dictées par le désir désintéressé, de maintenir les droits imprescriptibles de nations neutres, et donner une nouvelle preuve de leur loyauté et de leur amour pour la justice, les hautes parties contractantes prennent ici l'engagement le plus formel, de renouveler les défenses les plus severes à leurs capitaines, soit de haut bord, soit de la marine marchande, de charger, tenir, ou receler à leurs bords aucun des objets, qui, aux termes de la présente convention, pourroient être réputés de contrebande, et de tenir respectivement la main à l'exécution des ordres qu'elles seront publier dans leurs amirautés et partout où besoin sera, à l'effet de quoi l'ordonnance, qui renouvellera cette défense sous les peines les plus graves, sera imprimée à la suite du présent acte, pour qu'il n'en puisse être prétendu cause d'ignorance.

#### ARTICLE IV

Pour protéger le commerce commun de leurs sujets, sur le fondement des principes ci-dessus établis, Sa Majesté le roi de Suède et Sa Majesté impériale de toutes les Russies ont jugé à propos d'équiper

séparément un nombre de vaisseaux de guerre et de frégates proportionné à ce but ; les escadres de chaque puissance ayant à prendre la station et devant être employées aux convois qu'exigent son commerce et sa navigation, conformément à la nature et à la qualité du trafic de chaque nation.

#### ARTICLE V

Pour prévenir tous les inconvénients qui peuvent provenir de la mauvaise foi de ceux qui se servent du pavillon d'une nation sans lui appartenir, on convient d'établir pour règle inviolable, qu'un bâtiment quelconque, pour être regardé comme propriété du pays, dont il porte le pavillon, doit avoir à son bord, le capitaine du vaisseau et la moitié de l'équipage, des gens du pays, les papiers et passeports en bonne et due forme ; mais tout bâtiment qui n'observera pas cette règle et qui contreviendra aux ordonnances publiées à cet effet, et imprimées à la suite de la présente convention, perdra tous les droits à la protection des puissances contractants, et le gouvernement auquel il appartiendra, supportera seul les pertes, dommages et désagremens qui en résulteront.

#### ARTICLE VI

Si cependant il arrivoit que les vaisseaux marchands de l'une des puissances se trouvassent dans un parage où les vaisseaux de guerre de la même nation ne fussent pas stationnés, et où ils ne pourroient pas avoir recours à leurs propres convois, alors le commandant des vaisseaux de guerre de l'autre puissance, s'il en est réquis, doit, de bonne foi et sincèrement, leur prêter les secours, dont ils pourroient avoir besoin, et en tel cas, les vaisseaux de guerre et frégates de l'une des puissances serviront de soutien et d'appui aux vaisseaux marchands de l'autre ; bien entendu cependant, que les réclamans n'auroient fait aucun commerce illicite ni contraire aux principes de la neutralité.

#### ARTICLE VII

Cette convention n'aura point d'effet rétroactif, et par conséquent on ne prendra aucune part aux différends nés avant sa conclusion, à moins qu'il ne soit question d'actes de violence continues, tendans à fonder un système oppressif pour toutes les nations neutres de l'Europe en général.

#### ARTICLE VIII

S'il arrivoir, malgré tous les soins les plus attentifs des deux puissances et malgré l'observation de la neutralité la plus parfaite de leur part, que les vaisseaux marchands de Sa Majesté le roi de Suède ou de Sa Majesté impériale de toutes les Russies fussent insultés, pillés ou pris par les vaisseaux de guerre ou armateurs de l'une ou l'autre des puissances en guerre, alors le ministre de la partie lésée auprès du gouvernement dont les vaisseaux de guerre ou armateurs auront

commis de tels attentats, y fera des représentations, réclamera le vaisseau marchand enlevé et insistera sur les dédommagemens convenables, en ne pendant jamais de vue la réparation de l'insulte faite au pavillon. Le ministre de l'autre partie contractante se joindra à lui et appuiera ses plaintes de la manière la plus énergique et la plus efficace, et ainsi il sera agi d'un commun et parfait accord. Que si l'on refusoit de rendre justice sur ces plaintes, ou si l'on remettoit de la rendre d'un tems à l'autre, alors leurs Majestés useront de représailles contre la puissance qui la leur refuseroit, et elles se concerteront incessamment sur la manière la plus efficace d'effectuer ces justes représailles.

#### ARTICLE IX

S'il arrivoit que l'une ou l'autre des deux puissances, ou toutes les deux ensemble, à l'occasion ou on haine de la présente convention, ou pour quelque cause qui y auroit rapport, fut inquiétée, molestée ou attaquée, il a été également convenu que les deux puissances feront cause commune pour se défendre réciproquement et pour travailler et agir de concert à se procurer une pleine et entière satisfaction, tant pour l'insulte faite a leur pavillon, que pour les pertes causées à leurs sujets.

#### ARTICLE X

Les principes et les mesures adoptés par le présent acte seront également applicables à toutes les guerres maritimes par lesquelles l'Europe auroit le malheur d'être troublée. Ces stipulations seront en conséquence regardées comme permanentes et serviront de règle aux puissances contractantes en matière de commerce et de navigation, et toutes les fois qu'il s'agira d'apprécier les droits des nations neutres.

#### ARTICLE XI

Le but et l'objet principal de cette convention étant d'assurer la liberté générale du commerce et de la navigation, Sa Majesté le roi de Suède et Sa Majesté impériale de toutes les Russies conviennent et s'engagent d'avance à consentir, que d'autres puissances également neutres y accèdent, et qu'en adoptant les principes, elles en partagent les obligations ainsi que les avantages.

#### ARTICLE XII

Afin que les puissances en guerre ne puissent prétendre cause d'ignorance des arrangemens pris entre leurs dites Majestés, elles conviennent, de porter à la connoissance des parties belligérantes les mesures qu'elles ont contractées entre elles, d'autant moins hostiles, qu'elles ne sont au détriment d'aucun autre pays; mais qu'elles tendent uniquement à la sûreté du commerce et de la navigation de leurs sujets respectifs.

## ARTICLE XIII

La présente convention sera ratifiée par les deux parties contractantes et les ratifications échangées en bonne et due forme dans l'espace de six semaines ou plutôt, si faire se peut, à compter du jour de la signature.

En foi de quoi, nous soussignés, en vertu de nos pleinpouvoirs l'avons signée et y avons apposé le cachet de nos armes.

Fait à St. Pétersbourg, le quatre/seize décembre mille huit cent.

(L. S.) COURT STEDINGK

(L. S.) COMTE DE ROSTOPSHIN

**Convention between Russia and Denmark and Norway for the Re-establishment of an Armed Neutrality, December 16, 1800<sup>1</sup>**

Au nom de la très-sainte et indivisible Trinité.

La liberté de la navigation et la sûreté du commerce des puissances neutres ayant été compromises, et les principes du droit des nations méconnus dans la présente guerre maritime, Sa Majesté l'empereur de toutes les Russies et Sa Majesté le roi de Danemarck et de Norvège guidés par leur amour pour la justice et par une égale sollicitude pour tout ce qui peut concourir à la prospérité public dans leurs états, ont jugé convenable de donner une nouvelle sanction aux principes de neutralité, qui indestructibles dans leur essence, ne sollicitent que le concours des gouvernements intéressés à leur maintien pour les faire respecter. Dans cette vue Sa Majesté impériale a manifesté, par la déclaration du 15 août aux cours du Nord, qu'un même intérêt engage à des mesures uniformes dans de pareilles circonstances, combien il lui tenait à cœur de rétablir dans son inviolabilité le droit commun à tous les peuples, de naviguer et commercer librement et indépendamment des intérêts momentanés des parties belligérantes. Sa Majesté danoise partageoit les vœux et les sentimens de son auguste allié, et une heureuse analogie d'intérêts en cimentant leur confiance réciproque, a déterminé la resolution de rétablir le système de la neutralité armée, qui avoit été suivie avec tant de succès pendant la dernière guerre d'Amérique, en renouvelant ses maximes bienfaisantes dans une nouvelle convention adaptée aux circonstances actuelles.

Pour cet effet Sa Majesté l'empereur de toutes les Russies et Sa Majesté le roi de Danemarck et de Norvège ont nommé pour leurs plénipotentiaires, savoir: Sa Maj. impériale, le sieur comte Théodore de Rostopsin, son conseiller privé actuel, membre de son conseil, principal ministre du collége des affaires étrangères, directeur-général

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 7, p. 182.

des postes de l'empire, grand-chancelier et grand-croix de l'ordre souverain de St. Jean de Jérusalem, chevalier des ordres de St. André, de St. Alexandre-Nevsky et de St. Anne de la première classe, de ceux de St. Ивѣре, de l'Annonciade, de St. Maurice et Lazare, de St. Ferdinand et de St. Hubert; et Sa Majesté danoise, le sieur Niels de Rosenkrantz, son Envoyé-extraordinaire et ministre plénipotentiaire auprès de Sa Majesté l'empereur de toutes les Russies, son chambellan et aide de camp général; lesquels après l'échange de leurs pleinpouvoirs respectifs sont convenus des articles suivans :

#### ARTICLE I

Sa Majesté l'empereur de toutes les Russies et Sa Majesté le roi de Danemarck et de Norvège déclarent, vouloir tenir la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de leurs sujets avec qui que ce soit des puissances déjà en guerre ou qui pourroient y entrer dans la suite.

#### ARTICLE II

Pour éviter toute équivoque et tout malentendu sur ce qui doit être qualifié de contrebande, Sa Majesté impériale de toutes les Russies et Sa Majesté le roi de Danemarck et de Norvège déclarent, qu'elles ne reconnoissent pour telles que les objets suivans, savoir : canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, gibernes, selles et brides, en exceptant toutefois la quantité qui peut être nécessaire pour la défense du vaisseau et de ceux, qui en composent l'équipage; et tous les autres articles quelconques, non désignés ici, ne seront pas réputés munitions de guerre et navales, ni sujets à confiscation, et par conséquent passeront librement sans être assujettis à la moindre difficulté. Il est aussi convenu que le présent article ne portera aucun préjudice aux stipulations particulières des traités antérieurs avec les parties belligérantes, par lesquelles des objets de pareil genre seroient réservés, prohibés ou permis.

#### ARTICLE III

Tout ce qui peut être objet de contrebande étant ainsi déterminé et exclu du commerce des nations neutres, d'après le dispositif de l'article précédent, Sa Majesté impériale de toutes les Russies et Sa Majesté le roi de Danemarck et de Norvège entendent et veulent que tout autre trafic soit et reste parfaitement libre; leurs Majestés pour mettre sous une sauve-garde suffisante les principes généraux du droit naturel, dont la liberté du commerce et de la navigation, de même que les droits des peuples neutres sont une conséquence directe, ont résolu de ne les point laisser plus longtems dépendre d'une interprétation arbitraire, suggérée par des intérêts isolés et momentanés. Dans cette vue elles sont convenues :

1) Que tout vaisseau peut naviguer librement de port en port et sur les côtes des nations en guerre.

2) Que les effets appartenans aux sujets des dites puissances en guerre soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande.

3) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui où il y a, par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer, et que tout bâtiment naviguant vers un port bloqué ne pourra être regardé d'avoir contrevenu à la présente convention, que lorsqu'après avoir été averti par le commandant du blocus de l'état du port, il tachera d'y pénétrer en employant la force ou la ruse.

4) Que les vaisseaux neutres ne peuvent être arrêtés que sur de justes causes et faits évidents, qu'ils soient jugés sans retard, que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre le dédommagement qu'on accorde à ceux qui ont fait des pertes sans avoir été en contrevention, il soit rendu une satisfaction complète pour l'insulte faite au pavillon de leurs Majestés.

5) Que la déclaration de l'officier commandant le vaisseau ou les vaisseaux de la marine impériale ou royale qui accompagneront le convoi d'un ou de plusieurs bâtimens marchands, que son convoi n'a à bord aucune marchandise de contrebande, doit suffire pour qu'il n'y ait lieu à aucune visite sur son bord ni à celui des bâtimens de son convoi.

Pour assurer d'autant mieux à ces principes le respect dû à des stipulations dictées par le désir désintéressé de maintenir les droits imprescriptibles des nations neutres, et donner une nouvelle preuve de leur loyauté et de leur amour pour la justice, les hautes parties contractantes prennent ici l'engagement le plus formel, de renouveler les défenses les plus sévères à leurs capitaines, soit de haut bord, soit de la marine marchande, de charger, tenir ou recéler à leurs bords aucun des objets, qui, aux termes de la présente convention pourroient être réputés de contrebande; et de tenir respectivement la main à l'exécution des ordres qu'elles feront publier dans leurs amirautés et partout où besoin sera; à l'effet de quoi l'ordonnance qui renouvellera cette défense sous les peines les plus graves, sera imprimée à la suite du présent acte, pour qu'il n'en puisse être prétendu cause d'ignorance.

#### ARTICLE IV

Pour protéger le commerce commun de leurs sujets sur le fondement des principes ci-dessus établis, Sa Majesté impériale de toutes les Russies et Sa Majesté le roi de Danemarck et de Norvège ont jugé à propos d'équiper séparément un nombre de vaisseaux de guerre et de frégates proportionné à ce but; les escadres de chaque puissance ayant à prendre la station et devant être employées aux convois qu'exigent son commerce et sa navigation, conformément à la nature et à la qualité du trafic de chaque nation.



## ARTICLE V

Pour prévenir tous les inconvéniens qui peuvent provenir de la mauvaise foi de ceux qui se servent du pavillon d'une nation sans lui appartenir, on convient d'établir pour règle inviolable, qu'un bâtiment quelconque, pour être regardé comme propriété du pays dont il porte le pavillon, doit avoir à son bord le capitaine du vaisseau et la moitié de l'équipage des gens du pays, les papiers et passeports en bonne et due forme. Mais tout bâtiment qui n'observera pas cette règle, et qui contreviendra aux ordonnances publiées à cet effet et imprimées à la suite de la présente convention, perdra tous les droits à la protection des puissances contractantes, et le gouvernement auquel il appartiendra, supportera seul les pertes, dommages et désagrémens qui en résulteront.

## ARTICLE VI

Si cependant il arrivoit que les vaisseaux marchands de l'une des puissances se trouvassent dans un parage où les vaisseaux de guerre de la même nation ne fussent pas stationnés et où ils ne pourroient pas avoir recours à leurs propres convois, alors le commandant des vaisseaux de guerre de l'autre puissance, s'il en est requis, doit de bonne foi et sincèrement leur prêter les secours dont ils pourroient avoir besoin, et en tel cas, les vaisseaux de guerre et frégates de l'une des puissances serviront de soutien et d'appui aux vaisseaux marchands de l'autre, bien entendu cependant, que les réclamans n'auroient fait aucun commerce illicite ; ni contraire aux principes de la neutralité.

## ARTICLE VII

Cette convention n'aura point d'effet rétroactif et par conséquent on ne prendra aucune part aux différends nés avant sa conclusion, à moins qu'il ne soit question d'actes de violence continués, tendans à fonder un système oppressif pour toutes les nations neutres de l'Europe en général.

## ARTICLE VIII

S'il arrivoit malgré tous les soins les plus attentifs des deux puissances, et malgré l'observation de la neutralité la plus parfaite de leur part, que les vaisseaux marchands de Sa Majesté impériale de toutes les Russies ou de Sa Majesté le roi de Danemarck et de Norvège fussent insultés, pillés ou pris par les vaisseaux de guerre ou armateurs de l'une ou l'autre des puissances en guerre, alors le ministre de la partie lésée auprès du gouvernement dont les vaisseaux de guerre ou armateurs auront commis de tels attentats, y fera des représentations, réclamera le vaisseau marchand enlevé, et insistera sur les dédommagemens convenables, en ne perdant jamais de vue la réparation de l'insulte faite au pavillon. Le ministre de l'autre partie contractante se joindra à lui et appuyera ses plaintes de la manière la plus énergique

et la plus efficace, et ainsi il sera agi d'un commun et parfait accord. Que si l'on refusoit de rendre justice sur ces plaintes, ou si l'on remettoit de la rendre d'un tems à l'autre, alors leurs Majestés useront de représailles contre la puissance qui la leur refuserait, et elles se concerteront incessamment sur la manière la plus efficace d'effectuer ces justes représailles.

#### ARTICLE IX

S'il arrivait que l'une ou l'autre des deux puissances ou toutes les deux ensemble, à l'occasion ou en haine de la présente convention, ou pour quelque cause qui y auroit rapport, fût inquiétée, molestée ou attaquée, il a été également convenu, que les deux puissances feront cause commune pour se défendre réciproquement et pour travailler et agir de concert à se procurer une pleine et entière satisfaction, tant pour l'insulte faite à leur pavillon, que pour les pertes causées à leurs sujets.

#### ARTICLE X

Les principes et les mesures adoptées par le présent acte seront également applicables à toutes les guerres maritimes par lesquelles l'Europe aurait le malheur d'être troublée. Ces stipulations seront en conséquence regardées comme permanentes et serviront de règle aux puissances contractantes en matière de commerce et de navigation, et toutes les fois qu'il s'agira d'apprécier les droits des nations neutres.

#### ARTICLE XI

Le but et l'objet principal de cette convention étant d'assurer la liberté générale du commerce et de la navigation, Sa Majesté impériale de toutes les Russies et Sa Majesté le roi de Danemarck et de Norvège, conviennent et s'engagent d'avance à consentir que d'autres puissances également neutres y accèdent, et qu'en adoptant les principes, elles en partagent les obligations ainsi que les avantages.

#### ARTICLE XII

Afin que les puissances en guerre ne puissent prétendre cause d'ignorance des arrangemens pris entre leurs dites Majestés, elles conviennent de porter à la connoissance des parties belligérantes les mesures qu'elles ont contractées entre elles, d'autant moins hostiles qu'elles ne sont au détriment d'aucun autre pays, mais tendent uniquement à la sûreté du commerce et de la navigation de leurs sujets respectifs.

#### ARTICLE XIII

La présente convention sera ratifiée par les deux parties contractantes et les ratifications échangées en bonne et due forme, dans l'espace de six semaines, ou plutôt, si faire se peut, à compter du jour de la signature.

En foi de quoi, nous soussignés, en vertu de nos pleinpouvoirs, l'avons signée et y avons apposé la cachet de nous armes.

Fait à St. Pétersbourg, le 4/16 déc. mille huit cent.

(L. S.) NIELS DE ROSENKRANTZ

(L. S.) COMTE DE ROSTOPSHIN

## ARTICLES SÉPARÉS ET SECRETS<sup>1</sup>

### ARTICLE 1

Pour donner au système de la neutralité maritime armée tout le poids et toute la solidité dont il est susceptible, Leurs Majestés le Roi de Danemark et de Norvège et l'Empereur de toutes les Russies conviennent de mettre en mer au printemps, et aussitôt que la saison pourra le permettre, un nombre considérable de leurs vaisseaux de guerre pour les employer partout où le besoin l'exigera, et de les entretenir dans le même état aussi longtemps que les circonstances qui ont fait naître la nécessité de cet armement, resteront les mêmes. Sa Majesté Impériale fera pour cet effet équiper quinze vaisseaux de ligne et cinq frégates, et Sa Majesté Danoise huit vaisseaux de ligne et deux frégates.

### ARTICLE 2

Leurs Majestés s'engagent cependant réciproquement à prendre les mesures nécessaires pour pouvoir augmenter cette force, si les circonstances l'exigent, ou qu'il y ait une force ennemie plus formidable à combattre ou à redouter.

### ARTICLE 3

Leurs Majestés regardant la Baltique constamment comme une mer fermée, useront de tous les moyens en leur pouvoir pour en garantir la navigation et les côtes de toute hostilité, violence et vexation quelconques.

### ARTICLE 4

Si les circonstances rendaient nécessaire que les vaisseaux de guerre de Sa Majesté Impériale hivernassent dans les ports du Danemark ou de la Norvège, Sa Majesté Danoise prendrait les arrangements nécessaires pour que ces vaisseaux et leurs équipages y fussent soignés comme les siens propres, en observant ce qui sera stipulé à cet égard dans l'article 6.

### ARTICLE 5

Si la jonction des escadres est trouvée nécessaire, ou si quelques vaisseaux appartenant aux deux souverains se trouvent ensemble, celui des commandants qui aura le grade sur l'autre ou bien, à grades

<sup>1</sup>*Danske Tractater efter 1800* (Copenhagen, 1871), vol. 1, p. 10.

égaux, celui qui sera le plus ancien, prendra le commandement sur les vaisseaux réunis.

#### ARTICLE 6

Les vaisseaux de guerre des hautes Puissances contractantes seront, à leur sortie, approvisionnés au moins pour cinq mois.

Si au bout de ce temps les vaisseaux d'une de ces puissances se trouvaient dans les ports de l'autre, on leur y fournira, mais à leurs frais, les provisions dont ils auront besoin.

Ces articles séparés et secrets seront censés et regardés comme faisant partie de la convention même et seront signés et ratifiés de la même manière.

#### Convention between Russia and Prussia for the Reestablishment of an Armed Neutrality, December 18, 1800<sup>1</sup>

Au nom de la très-sainte et indivisible Trinité.

La liberté de la navigation et la sûreté du commerce des puissances neutres ayant été compromises et les principes du droit des nations méconnus dans la présente guerre maritime, Sa Majesté l'empereur de toutes les Russies et Sa Majesté le roi de Prusse, guidés par leur amour pour la justice et par une égale sollicitude pour tout ce qui peut concourir à la prospérité publique dans leurs états, ont jugé convenable de donner une nouvelle sanction aux principes de neutralité, qui indestructibles dans leur essence, ne sollicitent que le concours des gouvernemens intéressés à leur maintien pour les faire respecter. Dans cette vue Sa Majesté impériale a manifesté par la déclaration du 15. août aux cours du Nord, qu'un même intérêt engage à des mesures uniformes dans de pareilles circonstances combien il lui tenait à cœur de rétablir dans son inviolabilité le droit commun à tous les peuples de naviguer et commercer librement et indépendamment des intérêts momentanés des parties belligérantes. Sa Majesté prussienne partageoit les vœux et les sentimens de son auguste allié et une heureuse analogie d'intérêts en cimentant leur confiance réciproque, a déterminé la résolution de rétablir le système de la neutralité armée, qui avoit été suivie avec tant de succès pendant la dernière guerre d'Amérique, en renouvellant ses maximes bienfaisantes dans une nouvelle convention adaptée aux circonstances actuelles.

Pour cet effet Sa Majesté l'empereur de toutes les Russies et Sa Majesté le roi de Prusse ont nommé pour leurs plénipotentiaires, sa-

<sup>1</sup>Martens, *Recueil*, 2d ed., vol. 7, p. 189.

voir : Sa Majesté impériale, le sieur comte Théodor de Rostopsin, son conseiller privé actuel, membre de son conseil, principal ministre du collège des affaires étrangères, directeur-général des postes de l'empire, grand-chancelier et grand-croix de l'ordre souverain de St. Jean de Jérusalem, chevalier des ordres de St. André, de St. Alexandre-Nevsky et de St. Anne de la première classe, de ceux de St. Lazare, de l'Annonciade, de St. Maurice et Lazare, de St. Ferdinand et de St. Hubert ; et Sa Majesté prussienne, le sieur comte Spiridon de Lusi, lieutenant-général d'infanterie de ses armées, son Envoye-extraordinaire et ministre plénipotentiaire auprès de Sa Majesté l'empereur de toutes les Russies, chevalier de l'ordre de l'aigle rouge et de l'ordre pour le mérite ; lesquels après l'échange de leurs pleinpouvoirs sont convenus des articles suivans :

#### ARTICLE I

Sa Majesté l'empereur de toutes les Russies et Sa Majesté le roi de Prusse déclarent, vouloir tenir la main à la plus rigoureuse exécution des defenses portées contre le commerce de contrebande de leurs sujets avec qui que ce soit des puissances déjà en guerre ou qui pourroient y entrer dans la suite.

#### ARTICLE II

Pour éviter toute équivoque et tout malentendu sur ce qui doit être qualifié de contrebande, Sa Majesté impériale de toutes les Russies, et Sa Majesté prussienne déclarent qu'elles ne reconnaissent pour telles que les objets suivans, savoir : canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, gibernes, selles et brides, en exceptant toute fois la quantité qui peut être nécessaire pour la défense du vaisseaux et de ceux qui en composent l'équipage ; et tous les autres articles quelconques, non désignés ici, ne seront pas réputés munitions de guerre et navales, ni sujets à confiscation et par conséquent passeront librement sans être assujettis à la moindre difficulté. Il est aussi convenu que le présent article ne portera aucun préjudice aux stipulations particulières des traités antérieurs avec les parties belligérantes par lesquelles des objets de pareil genre seroient réservés, prohibés ou permis.

#### ARTICLE III

Tout ce qui peut être objet de contrebande étant ainsi déterminé et exclu du commerce des nations neutres d'après le dispositif de l'article précédent, Sa Majesté impériale de toutes les Russies et Sa Majesté prussienne entendent et veulent que tout autre trafic soit et reste parfaitement libres ; leurs Majestés pour mettre sous une sauve-garde suffisante les principes généraux du droit naturel, dont la liberté du commerce et de la navigation, de même que les droits des peuples neutres,

sont une conséquence directe, ont résolu de ne les point laisser plus long tems dépendre d'une interprétation arbitraire, suggérée par des intérêts isolés et momentanés. Dans cette vue elles sont convenues :

1) Que tout vaisseau peut naviguer librement de port en port et sur les côtes de nations en guerre.

2) Que les effets appartenans aux sujets des puissances en guerre soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande.

3) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui où il y a, par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer, et que tout bâtiment naviguant vers un port bloqué ne pourra être regardé d'avoir contrevenu à la présente convention, que lors qu'après avoir été averti par le commandant du blocus de l'état du port, il tachera d'y pénétrer en employant la force de la ruse.

4) Que les vaisseaux neutres ne peuvent être arrêtés que sur de justes causes et faits évidents, qu'ils soient jugés sans retard, que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre le dédommagement qu'on accorde à ceux qui ont fait des pertes sans avoir été en contrevention, il soit rendu une satisfaction complète pour l'insulte faite au pavillon de leurs Majestés.

5) Que la déclaration de l'officier commandant le vaisseau ou les vaisseaux de la marine impériale ou royale qui accompagneront le convoi d'un ou de plusieurs bâtimens marchands, que son convoi n'a à bord aucune marchandise de contrebande, doit suffire pour qu'il n'y ait lieu à aucune visite sur son bord ni à celui des bâtimens de son convoi.

Pour assurer d'autant mieux à ces principes le respect dû à des stipulations dictées par le désir désintéressé de maintenir les droits imprescriptibles des nations neutres, et donner une nouvelle preuve de leur loyauté et de leur amour pour la justice, les hautes parties contractantes prennent ici l'engagement le plus formel de renouveler les défenses les plus sévères à leurs capitaines, soit se haut-bord, soit de la marine marchande de charger, tenir ou recéler à leurs bords aucun des objets, qui aux termes de la présente convention pourroient être réputés de contrebande, et de tenir respectivement le main à l'exécution des ordres qu'elles feront publier dans leurs amirautés et partout où besoin sera, à l'effet de quoi l'ordonnance, qui renouvellera cette défense sous les peines les plus graves, sera imprimée à la suite du présent acte pour qu'il n'en puisse être prétendu cause d'ignorance.

#### ARTICLE IV<sup>1</sup>

En réciprocité de cette accession Sa Majesté l'empereur de toutes les Russies fera jouir le commerce et la navigation des sujets prus-

<sup>1</sup>Cet article est substitué aux art. IV., V. et VI. des conventions avec la Suède et le Danemarck, mais on retrouvera l'art. V. dans l'article séparé.

siens de la protection de ses flottes, en ordonnant à tous les chefs de ses escadres de protéger et défendre contre toute insulte et molestation les navires marchands prussiens qui se trouveront sur leur route, comme ceux d'une puissance amie, alliée et stricte observatrice de la neutralité; bien entendu cependant que les susdits navires ne seront employés à aucun commerce illicite ni contraire aux règles de la neutralité la plus exacte.

La même protection et la même assistance sera accordés au pavillon prussien de la part des vaisseaux de guerre danois et suédois, conformément aux principes de la neutralité armée, et Sa Majesté l'empereur de toutes les Russies s'engage à concourir, s'il est nécessaire, aux arrangemens qui doivent être stipulés pour cet effet dans les conventions séparées à conclure en suite du présent acte entre les cours de Berlin, de Copenhague et de Stockholm.

#### ARTICLE V

Cette convention n'aura point d'effet rétroactif, et par conséquent on ne prendra aucune part aux différends nés avant sa conclusion, à moins qu'il ne soit question d'actes de violence continués, tendans à former un système oppressif pour toutes les nations neutres de l'Europe en général.

#### ARTICLE VI

S'il arrivoit malgré tous les soins les plus attentifs des deux puissances et malgré l'observation de la neutralité la plus parfaite de leur part, que les vaisseaux marchands de Sa Majesté impériale de toutes les Russies, ou de Sa Majesté prussienne fussent insultés, pillés ou pris par les vaisseaux de guerre ou armateurs de l'une ou l'autre des puissances en guerre, alors le ministre de la partie lésée auprès du gouvernement dont les vaisseaux de guerre ou armateurs auront commis de tels attentats, y fera des représentations, réclamera le vaisseau marchand enlevé et insistera sur les dédommagemens convenables, en ne perdant jamais de vue la réparation de l'insulte faite au pavillon. Le ministre de l'autre partie contractante se joindra à lui, et appuiera ses plaintes de la manière la plus énergique et la plus efficace, et ainsi il sera agi d'un commun et parfait accord. Que si l'on refusoit de rendre justice sur ces plaintes ou si l'on remettoit de la rendre d'un tems à l'autre, alors leurs Majestés useront de représailles contre la puissance qui la leur refuserait, et elles se concerteront incessamment sur la manière la plus efficace d'effectuer ces justes représailles.

#### ARTICLE VII

S'il arrivoit que l'une ou l'autre des deux puissances, ou toutes les deux ensemble, à l'occasion ou en haine de la présente convention, ou pour quelque cause qui y auroit rapport, fut inquiétée, molestée ou attaquée, il a été également convenu, que les deux puissances feront

cause commune pour se défendre réciproquement et pour travailler et agir de concert à se procurer une pleine et entière satisfaction, tant pour l'insulte faite à leur pavillon, que pour les pertes causées à leurs sujets.

#### ARTICLE VIII

Les principes et les mesures adoptées par le présent acte, seront également applicables à toutes les guerres maritimes par lesquelles l'Europe auroit le malheur d'être troublée. Ces stipulations seront en conséquence regardées comme permanentes et serviront de règle aux puissances contractantes en matière de commerce et de navigation, et toutes les fois qu'il s'agira d'apprécier les droits des nations neutres.

#### ARTICLE IX

Le but et l'objet principal de cette convention étant d'assurer la liberté générale du commerce et de la navigation, Sa Majesté impériale de toutes les Russies et Sa Majesté prussienne conviennent et s'engagent d'avance à consentir, que d'autres puissances également neutres y accèdent, et qu'en adoptant les principes, elles en partagent les obligations ainsi que les avantages.

#### ARTICLE X

Afin que les puissances en guerre ne puissent prétendre cause d'ignorance des arrangements pris entre leurs dites Majestés, elles conviennent de porter à la connaissance des parties belligérantes les mesures qu'elles ont contractées entre elles, d'autant moins hostiles, qu'elles ne sont au détriment d'aucun pays, mais tendent uniquement à la sûreté du commerce et de la navigation de leurs sujets respectifs.

#### ARTICLE XI

La présente convention sera ratifiée par les deux parties contractantes et les ratifications échangées en bonne et due forme, dans l'espace de six semaines, ou plutôt si faire se peut, à compter du jour de la signature.

En foi de quoi nous soussignés, en vertu de nos pleinpouvoirs, l'avons signée et y avons apposé le cachet de nos armes.

Fait à St. Pétersbourg, le 6/18 déc. mille huit cent.

(L. S.) COMTE DE ROSTOPSIN

(L. S.) SPIRIDON COMTE DE LUSI

#### ARTICLE SUPPLÉMENTAIRE

Pour prévenir tous les inconveniens qui peuvent provenir de la mauvaise foi de ceux qui se servent du pavillon d'une nation sans lui appartenir, on convient d'établir pour règle inviolable, qu'un bâtiment quelconque, pour être regardé comme propriété du pays dont il porte



le pavillon, doit avoir à son bord le capitaine du vaisseau et la moitié de l'équipage des gens du pays, les papiers et passeports en bonne et due forme. Mais tout bâtiment qui n'observera pas cette règle et qui contreviendra aux ordonnances publiées à cet effet et imprimées à la suite de la présente convention, perdra tous les droits à la protection des puissances contractantes, et le gouvernement auquel il appartiendra, supportera seul les pertes, dommages et désagréments qui en résulteront.

### **Convention between Great Britain and Russia relative to Neutral Trade, June 17, 1801<sup>1</sup>**

Au Nom de la Très-Sainte et indivisible Trinité.

Le désir mutuel de S. M. L'Empereur de toutes les Russies et de S. M. le Roi du Royaume uni de la Grande Bretagne et de l'Irlande étant, non seulement de s'entendre entre Elles sur les différends qui ont altéré en dernier lieu la bonne intelligence et les rapports d'amitié qui subsistaient entre les deux Etats, mais encore de prévenir à l'avance, par des explications franches et précises, à l'égard de la navigation de leurs sujets respectifs, le renouvellement de semblables altercations, et les troubles qui pourraient en être la suite; et l'objet de la commune sollicitude de Leurs dites Majestés étant de parvenir le plutôt que faire se pourra à un arrangement équitable de ces différends, et une fixation invariable de leurs principes sur les droits de la Neutralité, dans leur application à leurs Monarchies respectives, afin de resserrer de plus en plus les liens d'amitié et de bonne correspondance dont Elles reconnaissent l'utilité et les avantages, Elles ont nommé et choisi pour Leurs plénipotentiaires, savoir:

S. M. L'Empereur de toutes les Russies, le sieur Nikita Comte de Panin Son Conseiller privé actuel, Ministre d'Etat au Département des affaires étrangères, chambellan actuel, chevalier grand-croix des ordres de St. Alexandre Newsky et de St. Anne de la première classe etc., et S. M. le Roi du Royaume uni de la Grande Bretagne et de l'Irlande, Alleyne Lord Baron St. Helens, Conseiller privé de Sa dite Majesté et Son ambassadeur extraordinaire et plénipotentiaire près S. M. L'Empereur de toutes les Russies, lesquels, après s'être communiqué leurs pleinpouvoirs et les avoir trouvés en bonne et due forme, sont convenus des points et articles suivants.

#### **ARTICLE I**

Il y aura désormais entre S. M. Impériale de toutes les Russies et S. M. Britannique, leurs sujets, Etats et pays de leur domination,

<sup>1</sup>F. Martens, *Traités et Conventions conclus par la Russie*, vol. 11, p. 28.

bonne et inaltérable amitié et intelligence, et subsisteront comme par le passé tous les rapports politiques de commerce et autres d'une utilité commune entre les sujets respectifs sans qu'ils puissent être troublés ni inquiétés en manière quelconque.

## ARTICLE II

S. M. L'Empereur de toutes les Russies et S. M. Britannique déclarent vouloir tenir la main à la plus rigoureuse exécution des défenses portées contre le commerce de contrebande de leurs sujets avec les ennemis de l'une et de l'autre des deux Hautes Parties contractantes.

## ARTICLE III

S. M. Impériale de toutes les Russies et S. M. Britannique ayant résolu de mettre sous une sauvegarde suffisante la liberté du commerce et de la navigation de Leurs sujets, dans le cas où l'une d'entre Elles seroit en guerre, tandis que l'autre resteroit neutre, Elles sont convenues :

1) Que les vaisseaux de la Puissance neutre pourront naviguer librement aux ports et sur les côtes des nations en guerre.

2) Que les effets embarqués sur les vaisseaux neutres seront libres à l'exception de la contrebande de guerre et des propriétés ennemies, et il est convenu de ne pas comprendre au nombre des dernières les marchandises du produit, du crû ou de la manufacture des pays en guerre qui auroient été acquises par des sujets de la Puissance neutre et seroient transportées pour leur compte, lesquelles marchandises ne peuvent être exceptées en aucun cas de la franchise accordée au pavillon de la dite Puissance.

3) Que pour éviter aussi toute équivoque et tout mésentendu sur ce qui doit être qualifié de contrebande de guerre, S. M. Impériale de toutes les Russies et S. M. Britannique déclarent conformément à l'article XI du Traité de commerce conclu entre les deux couronnes le 10 (21) février 1797, qu'Elles ne reconnaissent pour telle que les objets suivans, savoir : canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, gibernes, selles et brides, en exceptant toutefois la quantité des susdits articles qui peut être nécessaire pour la défense du vaisseau et de ceux qui en composent l'équipage, et tous les autres articles quelconques non désignés ici ne seront pas réputés munitions de guerre et navales ni sujets à confiscation et par conséquent passeront librement sans être assujettis à la moindre difficulté, à moins qu'ils ne puissent être réputés propriétés ennemies dans le sens arrêté ci-dessus.

Il est aussi convenu que ce qui est stipulé dans le présent Article ne portera aucun préjudice aux stipulations particulières de l'une ou de l'autre couronne avec d'autres Puissances par lesquelles des objets de pareil genre seroient réservés, prohibés ou permis.

4) Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il-y-a par la disposition de la Puissance qui l'attaque, avec des vaisseaux arrêtés ou suffisamment proches, un danger évident d'entrer.

5) Que les vaisseaux de la Puissance neutre ne peuvent être arrêtés que sur de justes causes et faits évidents, qu'ils soient jugés sans retard et que la procédure soit toujours uniforme, prompte et légale.

Pour assurer d'autant mieux le respect dû à ces stipulations dictées par le désir sincère de concilier tous les intérêts et donner une nouvelle preuve de Leur loyauté et de Leur amour pour la justice, les Hautes Parties contractantes prennent ici engagement le plus formel de renouveler les défenses les plus sévères à Leurs capitaines soit de haut bord, soit de la marine marchande de charger, tenir ou recéler à leurs bords aucun des objets qui, aux termes de la présente Convention, pourroient être réputés de contrebande et de tenir respectivement la main à l'exécution des ordres qu'Elles auront publiés dans Leurs amirautés et partout où besoin sera.

#### ARTICLE IV

Les deux Hautes Parties contractantes voulant encore prévenir tout sujet de dissention à l'avenir, en limitant le droit de visite des vaisseaux marchands allant sous convoi, aux seuls cas où la Puissance belligérante pourroit essuyer un préjudice réel par l'abus du pavillon neutre, sont convenues :

1) Que le droit de visiter les navires marchands appartenans aux sujets de l'une des Puissances contractantes et naviguant sous le convoi d'un vaisseau de guerre de la dite Puissance ne sera exercé que par les vaisseaux de guerre de la partie belligérante et ne s'étendra jamais aux armateurs, corsaires ou autres bâtimens qui n'appartiennent pas à la flotte Impériale ou Royale de Leurs Majestés, mais que Leurs sujets auroient armés en guerre.

2) Que les propriétaires de tous les navires marchands appartenans aux sujets de l'un des Souverains contractans, qui seront destinés à aller sous convoi d'un vaisseau de guerre, seront tenus, avant qu'ils ne reçoivent leurs instructions de navigation, de produire au commandant du vaisseau de convoi leurs passeports et certificats ou lettres de mer dans la forme annexée au présent Traité.

3) Que lorsqu'un tel vaisseau de guerre, ayant sous convoi des navires marchands, sera rencontré par un vaisseau ou des vaisseaux de guerre de l'autre partie contractante qui se trouvera alors en état de guerre, pour éviter tout désordre, on se tiendra hors de la portée du canon, à moins que l'état de la mer ou le lieu de la rencontre ne nécessite un plus grand rapprochement, et le commandant du vaisseau de la Puissance belligérante enverra une chaloupe à bord du vaisseau de convoi, où il sera procédé réciproquement à la vérification des papiers et certificats qui doivent constater, d'une part, que le vaisseau

de guerre neutre est autorisé à prendre sous son escorte tel ou tels vaisseaux marchands de sa nation, chargés de telle cargaison et pour tel port ; de l'autre part, que le vaisseau de guerre de la Partie belligérante appartient à la flotte Impériale ou Royale de Leurs Majestés.

4) Cette vérification faite, il n'y aura lieu à aucune visite, si les papiers sont reconnus en règle et s'il n'existe aucun motif valable de suspicion.

Dans le cas contraire, le commandant du vaisseau de guerre neutre (y étant dûment réquis par le commandant du vaisseau ou des vaisseaux de la Puissance belligérante) doit amener et détenir son convoi pendant le tems nécessaire pour la visite des bâtimens qui le composent, et il aura la faculté de nommer et déléguer un ou plusieurs officiers pour assister à la visite des dits bâtimens, laquelle se fera en sa présence sur chaque bâtiment marchand conjointement avec un ou plusieurs officiers préposés par le commandant du vaisseau de la partie belligérante.

5) S'il arrive que le commandant du vaisseau ou des vaisseaux de la Puissance en guerre, ayant examiné les papiers trouvés à bord et ayant interrogé le maître et l'équipage du vaisseau, appercevra des raisons justes et suffisantes pour détenir le navire marchand afin de procéder à une recherche ultérieure, il notifiera cette intention au commandant du vaisseau de convoi qui aura le pouvoir d'ordonner à un officier de rester à bord du navire ainsi détenu et assister à l'examen de la cause de sa détention.

Le navire marchand sera amené tout de suite au port le plus proche et le plus convenable appartenant à la Puissance belligérante et la recherche ultérieure sera conduite avec toute la diligence possible.

#### ARTICLE V

Il est également convenu que si quelque navire marchand ainsi convoyé étoit détenu sans une cause juste et suffisante, le commandant du vaisseau ou des vaisseaux de la Puissance belligérante sera non seulement tenu envers les propriétaires du navire et de la cargaison à une compensation pleine et parfaite pour toutes pertes, fraix, dommages et dépenses occasionnées par une telle détention, mais il subira encore une punition ultérieure pour tout acte de violence ou autre faute qu'il auroit commis, suivant ce que la nature du cas pourroit exiger. Par contre, il ne sera point permis sous quelque prétexte que ce soit, au vaisseau de convoi de s'opposer par la force à la détention du navire ou des navires marchands par le vaisseau ou les vaisseaux de guerre de la Puissance belligérante, obligation à laquelle le commandant du vaisseau de convoi n'est point tenu envers les corsaires et armateurs.

#### ARTICLE VI

Les Hautes Parties contractantes donneront des ordres précis et efficaces pour que les sentences sur les prises faites en mer soient con-

formes aux règles de la plus exacte justice et équité, qu'elles soient rendues par des juges non suspects et qui ne soient point intéressés dans l'affaire dont il sera question. Le gouvernement des Etats respectifs veillera à ce que les dites sentences soient promptement et dûment exécutées selon les formes prescrites.

Et en cas de détention mal fondée ou autre contrevention aux règles stipulées par le présente article, il sera accordé aux propriétaires d'un tel navire et de la cargaison des dédommagemens proportionnés à la perte qu'on leur aura occasionnée. Les règles à observer pour ces dédommagemens et pour le cas de détention mal fondée, de même que les principes à suivre pour accélérer les procédures feront la matière d'articles additionnels que les Parties contractantes conviennent d'arrêter entr'elles et qui auront même force et valeur que s'ils étoient insérés dans le présent acte.

Pour cet effet Leurs Majestés Impériale et Britannique s'engagent mutuellement de mettre la main à l'œuvre qui doit servir de complément à ces stipulations et de se communiquer sans délai les vues que leur suggérera leur égale sollicitude pour prévenir les moindres sujets de contestation à l'avenir.

#### ARTICLE VII

Pour obvier à tous les inconvéniens qui peuvent provenir de la mauvaise foi de ceux qui se servent du pavillon d'une nation sans lui appartenir, on convient d'établir pour règle inviolable, qu'un bâtiment quelconque, pour être regardé comme propriété du pays dont il porte le pavillon, doit avoir à son bord le capitaine du vaisseau et la moitié de l'équipage des gens du pays et les papiers et passeports en bonne et due forme; mais tout bâtiment qui n'observe pas cette règle et qui contreviendra aux ordonnances publiées à cet effet perdra tous les droits à la protection des Puissances contractantes.

#### ARTICLE VIII

Les principes et les mesures adoptés par le présent acte seront également applicables à toutes les guerres maritimes, où l'une des deux Puissances seroit engagée, tandis que l'autre resteroit neutre. Ces stipulations seront en conséquence regardées comme permanentes et serviront de règle constante aux Puissances contractantes en matière de commerce et de navigation.

#### ARTICLE IX

S. M. le Roi de Dannemarc et S. M. le Roi de Suède seront immédiatement invités par S. M. Impériale au nom des deux Puissances contractantes, à accéder à la présente convention et en même tems à renouveler et confirmer Leurs Traités respectifs de commerce avec S. M. Britannique, et Sa dite Majesté s'engage moyennant les actes qui auront constaté cet accord de rendre et restituer à l'une et l'autre de ces

Puissances toutes les prises qui ont été faites sur elles, ainsi que les terres et pays de Leur domination qui ont été conquis par les armes de S. M. Britannique depuis la rupture, dans l'état où se trouvoient ces possessions à l'époque, où les troupes de S. M. Britannique y sont entrées. Les ordres de Sa dite Majesté pour la restitution de ces prises et de ces conquêtes seront expédiés immédiatement après l'échange des ratifications des actes par lesquels la Suède et le Danemarck accèderont au présent Traité.

#### ARTICLE X

La présente convention sera ratifiée par les deux Parties contractantes et les ratifications échangées à St. Pétersbourg dans l'espace de deux mois pour tout délai, à compter du jour de la signature.

En foi de quoi les plénipotentiaires respectifs en ont fait faire deux exemplaires parfaitement semblables, signés de leurs mains et y ont apposé le sceau de leurs armes.

Fait à St. Pétersbourg, le 5 (17) juin 1801.

(L. S.) N. COMTE DE PANIN  
(L. S.) ST. HELENS

#### FORMULAIRE DES PASSEPORTS ET LETTRES DE MER QUI DOIVENT ÊTRE DÉLIVRÉS DANS LES AMIRAUTÉS RESPECTIVES DES ÉTATS DES DEUX HAUTES PARTIES CONTRACTANTES AUX VAISSEAUX ET BÂTIMENS QUI EN SORTIRONT CONFORMÉMENT À L'ARTICLE IV DU PRÉSENT TRAITÉ

Faisons savoir que Nous avons donné congé et permission à N. . . . de la ville ou lieu de N. . . . maître ou conducteur du vaisseau N. . . . appartenant à N. . . . du port de N. . . . tonneaux ou environ, qui se trouve à présent au port et havre de N. . . . de s'en aller à N. . . . chargé de N. . . . pour le compte de N. . . . après que la visite de son vaisseau aura été faite avant son départ, selon la manière usitée, par les officiers préposés à cet effet et le dit N. . . . ou tel autre fondé de pouvoirs pour le remplacer sera tenu de produire, dans chaque port ou havre, où il entrera avec le dit vaisseau, aux officiers du lieu le présent congé et de porter le pavillon de N. . . . durant son voyage. En foi de quoi etc.

#### ARTICLE SÉPARÉ ET SECRET

S. M. Britannique voulant donner un témoignage non équivoque de la confiance qu'elle met dans les soins magnanimes de S. M. l'Empereur de toutes les Russies pour le rétablissement de la paix dans le Nord, et les dispositions manifestées par les Cours de Stockholm et de Copenhague donnant tout lieu d'espérer que ces soins seront couronnés d'une prompte et heureuse issue, Sa dite Majesté Britannique s'engage

de donner immédiatement des ordres pour effectuer, dans le plus court délai possible, le retour de son escadre de la mer Baltique dans celle du Nord.

Cet article séparé et secret aura la même force et valeur etc.

En foi de quoi etc.

Fait à St. Pétersbourg, le 5 (17) juin 1801.

(L. S.) N. COMTE DE PANIN

(L. S.) ST. HELENS

#### ARTICLE I SÉPARÉ

Les intentions pures et magnanimes de S. M. l'Empereur de toutes les Russies l'ayant déjà porté à restituer les navires et les biens des sujets britanniques qui avaient été séquestrés en Russie, Sa dite Majesté confirme cette disposition dans toute son étendue, et S. M. Britannique s'engage également à donner immédiatement des ordres pour faire lever tout séquestre sur les propriétés russes, danoises et suédoises détenues dans les ports de la Grande Bretagne.

Et pour constater d'autant mieux son désir sincère de terminer à l'amiable les différends survenus entre la Grande Bretagne et les Cours du Nord et pour qu'aucun nouvel incident ne puisse apporter des entraves à cette œuvre salubre, S. M. Britannique s'engage de donner des ordres aux commandans de ses forces de terre et de mer pour que l'armistice actuellement subsistant avec les Cours de Suède et de Dannemark soit prolongé jusqu'au terme de trois mois à dater de ce jour, et S. M. l'Empereur de toutes les Russies, guidé par les mêmes motifs s'engage au nom de ses alliés de faire maintenir également cet armistice pendant le susdit terme.

Cet article séparé aura la même force et valeur etc.

En foi de quoi etc.

Fait à St. Pétersbourg, le 5 (17) juin 1801.

(L. S.) N. COMTE DE PANIN

(L. S.) ST. HELENS

#### ARTICLE II SÉPARÉ

Les différends et mésentendus qui subsistaient entre S. M. l'Empereur de toutes les Russies et S. M. le Roi du Royaume uni de la Grande Bretagne et de l'Irlande étant ainsi terminés à l'avenir l'harmonie et la bonne intelligence que les deux Hautes Parties contractantes ont à cœur de consolider, Leurs dites Majestés confirment de nouveau par la présente convention le Traité de commerce du 10 (21) février 1797 dont toutes les stipulations sont rappelées ici pour être maintenues dans toute leur étendue.

Cet article séparé aura la même force et valeur etc.

En foi de quoi etc.

Fait à St. Pétersbourg, le 5 (17) juin 1801.

(L. S.) N. COMTE DE PANIN

(L. S.) ST. HELENS

**Additional Articles and Declaration to the Convention of June 17, 1801, between Great Britain and Russia relative to Neutral Trade, October 20, 1801<sup>1</sup>**

**ARTICLES ADDITIONNELS**

Comme par l'article VI de la Convention, conclue le 5 (17) juin 1801 entre S. M. Impériale de toutes les Russies et S. M. Britannique, il a été stipulé que les deux hautes Parties contractantes arrêteraient entr'elles des Articles additionnels, qui fixeraient les règles et les principes à suivre tant pour l'accélération des procédures judiciaires sur des prises faites en mer, que pour les dédommagemens qui seraient dûs aux propriétaires des navires et des cargaisons neutres, dans le cas d'une détention mal fondée, Leurs dites Majestés ont nommé et autorisé à cet effet savoir :

S. M. l'Empereur de toutes les Russies, le sr. Alexandre prince de Kourakin, Son Vice-Chancelier, Conseiller privé actuel, Ministre du Conseil d'Etat, chambellan actuel, grand chancelier de l'ordre souverain de St. Jean de Jérusalem et chevalier des ordres de Russie, de St. André, de St. Alexandre Nevsky, etc.

et le sr. Victor comte de Kotschoubey, Son Conseiller privé actuel, Ministre au Département des affaires étrangères, sénateur, chambellan actuel et chevalier des ordres, de St. Alexandre Nevsky, de St. Vladimir de la seconde classe etc. ;

et S. M. le Roi du Royaume uni de la Grande Bretagne et l'Irlande, Alleyne Lord Baron St. Helens, Paire du dit Royaume uni, du Conseil privé de Sa dite Majesté et son Ambassadeur extraordinaire et plénipotentiaire près S. M. l'Empereur de toutes les Russies ;

lesquels en vertu de leurs pleinpouvoirs respectifs sont convenus des Articles suivans.

**ARTICLE I**

En cas de détention malfondée ou autre contravention aux règles convenues, il sera accordé aux propriétaires du navire ainsi détenu et de sa cargaison, pour chaque jour de retard, des dédommagemens proportionnés à la perte qu'ils auraient soufferte, en raison du frêt du dit navire et de la nature de sa cargaison.

**ARTICLE II**

Si les Ministres de l'une des hautes Parties contractantes ou autres personnes accréditées de sa part auprès de la Puissance belligérante portaient des plaintes contre les jugemens qui auraient été rendus sur les dites prises par les Cours des Amirautés respectives, l'affaire sera évoquée en Russie au Sénat dirigeant et dans la Grande Bretagne au Conseil du Roi.

<sup>1</sup>F. Martens, *Traité et Conventions conclus par la Russie*, vol. 11, pp. 41, 44.



## ARTICLE III

Des deux côtés on examinera soigneusement si les règles et précautions stipulées dans la présente Convention ont été observées, ce qui devra être fait avec toute la célérité possible. Les deux hautes Parties contractantes s'engageant de plus à adopter les moyens les plus efficaces, pour que les jugements de Leurs différents tribunaux sur les prises faites en mer ne soient sujets à aucun délai inutile.

## ARTICLE IV

Les effets en litige ne pourront être vendus, ni déchargés avant le jugement définitif sans une nécessité réelle et pressante, qui aura été constatée devant la Cour de l'Amirauté et moyennant une Commission autorisée à cet effet, et il ne sera point permis aux capteurs de rien retirer ni enlever de leur propre autorité d'un vaisseau ainsi détenu.

Ces Articles additionnels faisant partie de la Convention, signée le 5 (17) juin 1801 aux noms de Leurs Majestés Impériale de toutes les Russies et Britannique, auront la même force et valeur que s'ils étaient insérés mot à mot dans la dite Convention.

En foi de quoi Nous soussignés, munis des pleinpouvoirs de Leurs dites Majestés, avons signé en Leurs noms les présents Articles additionnels et y avons apposé le cachet de nos armes.

Fait à Moscou, le 8 (20) octobre 1801.

(L. S.) LE PRINCE DE KOURAKIN

(L. S.) LE COMTE DE KOTSCHOUBEY

(L. S.) ST. HELENS

## DECLARATION

Pour prévenir qu'il ne s'élève aucun sujet de doute ni de mésentendu sur le contenu de la seconde section de l'Article III de la Convention conclue le 5 (17) juin 1801 entre S. M. l'Empereur de toutes les Russies et S. M. Britannique, les dites hautes Parties contractantes sont convenues et déclarent que la liberté du commerce et de la navigation, accordée par le dit Article aux sujets de la Puissance neutre, ne les autorise point à transporter directement, en temps de guerre, les marchandises et les denrées des colonies de la Puissance belligérante dans les possessions continentales, ni vice versa de la Métropole dans les colonies ennemies, mais que les dits sujets doivent jouir néanmoins pour ce commerce des mêmes avantages et facilités, dont jouissent les nations les plus favorisées et commément les Etats-Unis de l'Amérique.

En foi de quoi etc.

A Moscou, le 8 (20) octobre 1801.

(L. S.) LE PRINCE DE KOURAKIN

(L. S.) LE COMTE DE KOTSCHOUBEY

(L. S.) ST. HELENS

**Act of Accession of the King of Denmark and Norway to the Convention of June 17, 1801, between Great Britain and Russia, relative to Neutral Trade, October 23, 1801<sup>1</sup>**

Nom de la très Sainte et indivisible Trinité.

S. M. L'Empereur de toutes les Russies et S. M. le Roi du Royaume uni de le Grande Bretagne et de l'Irlande, ayant par une suite de leur désir mutuel de terminer de la manière la plus équitable les différends survenus entre elles et encore entre la Grande Bretagne et les autres Puissances maritimes du Nord, au sujet de la navigation de leurs sujets respectifs, conclu une Convention, signée par leurs plénipotentiaires à St.-Pétersbourg, le 5 (17) juin de la présente année, et leur commune sollicitude ne s'étendant pas seulement à prévenir de semblables altercations à l'avenir, et les troubles qui pourraient en être la suite, par la fixation et l'application à leurs Monarchies respectives des principes et des droits de la neutralité; mais encore à en rendre le système commun et également avantageux aux Puissances maritimes du Nord, il a été stipulé par l'Article IX de cette Convention, que S. M. Danoise seroit invitée par S. M. l'Empereur de toutes les Russies, au nom des Hautes Parties contractantes, à accéder à la dite Convention, et S. M. le Roi de Dannemark et de Norvège, animée des même sentimens de paix et de conciliation, désirant d'éloigner tout ce qui a pu et pourroit à l'avenir altérer la bonne intelligence entre Elle et S. M. Britannique, et de rétablir cette ancienne harmonie entièrement sur l'ancien pied, ainsi que l'état des choses, tel qu'il subsistait par ses Traités et Conventions avec la Grande Bretagne, Sa dite Majesté n'a point hésité à se rendre à l'invitation, qui lui a été faite d'accéder à la dite Convention, signée à St.-Pétersbourg, le 5 (17) juin dernier.

Pour parvenir à ce but salulaire et donner à cet Acte d'accession et à l'acceptation de S. M. Impériale toute l'authenticité dont il est susceptible et le revêtir des solemnités d'usage, leurs dites Majestés ont nommé pour leurs plénipotentiaires, savoir :

S. M. L'Empereur de toutes les Russies, le sieur Alexandre prince de Kourakin, son Vice-Chancelier, Conseiller privé actuel, Ministre du Conseil d'Etat etc.

et le sieur Victor comte de Kotschoubey, son Conseiller privé actuel, Ministre au Département des Affaires étrangères, Sénateur, etc.

et S. M. Danoise, le sieur François Xavier Joseph comte de Daneskiold-Löwendal et du Saint Empire, chevalier de l'Ordre de St. Jean de Jérusalem, Général-Major à son service et Chef de son corps de la marine et son Envoyé extraordinaire et Ministre plénipotentiaire auprès de S. M. L'Empereur de toutes les Russies;

lesquels après avoir échangé entre eux leurs pleinpouvoirs, trouvés en bonne et due forme, ont conclu et arrêté que tous les Articles de la

<sup>1</sup>F. Martens, *Traités et Conventions conclus par la Russie*, vol. 11, p. 45.

Convention, conclue entre S. M. L'Empereur de toutes les Russies et S. M. le Roi du Royaume uni de la Grande Bretagne et de l'Irlande, le 5 (17) juin de la présente année, ainsi que ceux séparés qui y sont joints et ceux additionnels arrêtés le 8 (20) octobre 1801, entre les plénipotentiaires de Leurs dites Majestés, en toutes leurs clauses, conditions et obligations, doivent être regardés comme s'ils étaient faits, convenus et arrêtés de mot à mot entre S. M. Impériale de toutes les Russies et S. M. Danoise elles-mêmes, en qualité de Parties principales contractantes, aux différences près, qui résultent de la nature des Traités et engagemens antécédemment subsistans entre l'Angleterre et le Dannemarc, dont la continuité et le renouvellement sont assurés par la susdite Convention, et avec la stipulation expresse de la part des Hautes Parties contractantes et accédentes, que la stipulation de l'Article II des Articles additionnels, signés à Moscou le 8 (20) octobre 1801, par les plénipotentiaires de Leurs Majestés Impériale et Britannique, qui fixe que les jugemens en dernier ressort des causes en litige seront évoqués en Russie au Sénat dirigeant et dans la Grande Bretagne au Conseil du Roi, doit s'entendre par rapport au Dannemarc, que les dits jugemens y seront évoqués par devant le tribunal suprême de ce Royaume.

Afin de prévenir toute inexactitude, il a été convenu, que la dite Convention, signée le 5 (17) juin, les Articles séparés y annexés et ceux additionnels, arrêtés le 8 (20) octobre 1801, seraient insérés ici de mot à mot et ainsi qu'il suit.

*[Ici suit le texte de la Convention du 5 (17) juin 1801 avec toutes annexes.]*

En conséquence de tout quoi, Sa Majesté le Roi de Dannemarc accède, à la dite Convention et aux dits Articles séparés et additionnels, tels qu'ils sont transcrits ci-dessus, sans aucune réserve, ni exception, déclarant et promettant d'en accomplir toutes les clauses, conditions et obligations, en ce qui la concerne, et S. M. L'Empereur de toutes les Russies accepte la présente accession de S. M. Danoise et promet pareillement d'en accomplir à son égard, sans aucune réserve, ni exception, tous les Articles, clauses et conditions contenus dans la dite Convention, les dits Articles séparés et additionnels insérés ci-dessus.

Les ratifications du présent Acte d'accession et d'acceptation seront échangées, dans l'espace de deux mois, ou plutôt si faire se peut, et seront en même tems exécutées le plus promptement possible, les stipulations de la dite Convention, en égard au rétablissement plein et entier de l'état des choses, tel qu'il existait avant l'époque des mésentendus qui se trouvent heureusement levés dans le moment actuel.

En foi de quoi etc.

Fait à Moscou, le 11 (23) octobre 1801.

(L. S.) LE PRINCE DE KOURAKIN

(L. S.) LE COMTE DE KOTSCHOUBEY

(L. S.) F. X. J. COMTE DE DANNESKIOLD-LÖWENDAL













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